

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

**PLAINTIFF'S
EXHIBIT**

Page 1	Page 3
1 IN THE UNITED STATES DISTRICT COURT	1 or prior thereto.
2 FOR THE MIDDLE DISTRICT OF ALABAMA	2 IT IS FURTHER STIPULATED AND AGREED
3 SOUTHERN DIVISION	3 that the notice of filing of the deposition by
4	4 the Court Reporter is waived.
5 CASE NUMBER: 1:06-cv-243-MEF	5
6	6
7 SAMUEL HOUSTON,	7
8 Plaintiff,	8
9 vs.	9
10 ARMY FLEET SERVICES, L.L.C.,	10
11 Defendant.	11
12	12
13	13
14 BEFORE:	14
15 Cynthia M. Noakes, Commissioner	15
16 and Court Reporter	16 *****
17	17
18	18
19	19
20 DEPOSITION TESTIMONY OF SAMUEL HOUSTON	20
21	21
22	22
23 *****	23

Page 2	Page 4
1 STIPULATION	1 INDEX
2	2 EXAMINATION BY: PAGE NUMBER:
3 IT IS STIPULATED AND AGREED by and	3 MR. STARLING 8-167, 176-179
4 between the parties through their respective	4 MR. JACOBS 167-176
5 counsel, that the deposition of SAMUEL HOUSTON	5
6 may be taken before Cynthia M. Noakes, Court	6 EXHIBITS:
7 Reporter, at the Offices of HOLIDAY INN EXPRESS,	7 Defendant's Exhibit No. 1 12
8 1006 Boll Weevil Circle, Enterprise, Alabama	8 Defendant's Exhibit No. 2 29
9 36330, on the 20th day of February, 2007.	9 Defendant's Exhibit No. 3 47
10 IT IS FURTHER STIPULATED AND AGREED	10 Defendant's Exhibit No. 4 50
11 that the signature to and the reading of the	11 Defendant's Exhibit No. 5 57
12 deposition by the witness is waived, the	12 Defendant's Exhibit No. 6 61
13 deposition to have the same force and effect as	13 Defendant's Exhibit No. 7 65
14 if full compliance had been had with all laws and	14 Defendant's Exhibit No. 8 67
15 rules of Court relating to the taking of	15 Defendant's Exhibit No. 9 77
16 depositions.	16 Defendant's Exhibit No. 10 81
17 IT IS FURTHER STIPULATED AND AGREED	17 Defendant's Exhibit No. 11 82
18 that it shall not be necessary for any objections	18 Defendant's Exhibit No. 12 85
19 to be made by counsel to any questions except as	19 Defendant's Exhibit No. 13 87
20 to the form or leading questions, and that	20 Defendant's Exhibit No. 14 90
21 counsel for the parties may make objections and	21 Defendant's Exhibit No. 15 96
22 assign grounds at the time of the trial, or at	22 Defendant's Exhibit No. 16 103
23 the time said deposition is offered in evidence,	23 Defendant's Exhibit No. 17 107

1 (Pages 1 to 4)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 1	Page 3
1 IN THE UNITED STATES DISTRICT COURT	1 or prior thereto.
2 FOR THE MIDDLE DISTRICT OF ALABAMA	2 IT IS FURTHER STIPULATED AND AGREED
3 SOUTHERN DIVISION	3 that the notice of filing of the deposition by
4	4 the Court Reporter is waived.
5 CASE NUMBER: 1:06-cv-243-MEF	5
6	6
7 SAMUEL HOUSTON,	7
8 Plaintiff,	8
9 vs.	9
10 ARMY FLEET SERVICES, L.L.C.,	10
11 Defendant.	11
12	12
13	13
14 BEFORE:	14
15 Cynthia M. Noakes, Commissioner	15
16 and Court Reporter	16 *****
17	17
18	18
19	19
20 DEPOSITION TESTIMONY OF SAMUEL HOUSTON	20
21	21
22	22
23 *****	23
Page 2	Page 4
1 STIPULATION	1 INDEX
2	2 EXAMINATION BY: PAGE NUMBER:
3 IT IS STIPULATED AND AGREED by and	3 MR. STARLING 8-167, 176-179
4 between the parties through their respective	4 MR. JACOBS 167-176
5 counsel, that the deposition of SAMUEL HOUSTON	5
6 may be taken before Cynthia M. Noakes, Court	6 EXHIBITS:
7 Reporter, at the Offices of HOLIDAY INN EXPRESS,	7 Defendant's Exhibit No. 1 12
8 1006 Boll Weevil Circle, Enterprise, Alabama	8 Defendant's Exhibit No. 2 29
9 36330, on the 20th day of February, 2007.	9 Defendant's Exhibit No. 3 47
10 IT IS FURTHER STIPULATED AND AGREED	10 Defendant's Exhibit No. 4 50
11 that the signature to and the reading of the	11 Defendant's Exhibit No. 5 57
12 deposition by the witness is waived, the	12 Defendant's Exhibit No. 6 61
13 deposition to have the same force and effect as	13 Defendant's Exhibit No. 7 65
14 if full compliance had been had with all laws and	14 Defendant's Exhibit No. 8 67
15 rules of Court relating to the taking of	15 Defendant's Exhibit No. 9 77
16 depositions.	16 Defendant's Exhibit No. 10 81
17 IT IS FURTHER STIPULATED AND AGREED	17 Defendant's Exhibit No. 11 82
18 that it shall not be necessary for any objections	18 Defendant's Exhibit No. 12 85
19 to be made by counsel to any questions except as	19 Defendant's Exhibit No. 13 87
20 to the form or leading questions, and that	20 Defendant's Exhibit No. 14 90
21 counsel for the parties may make objections and	21 Defendant's Exhibit No. 15 96
22 assign grounds at the time of the trial, or at	22 Defendant's Exhibit No. 16 103
23 the time said deposition is offered in evidence,	23 Defendant's Exhibit No. 17 107

1 (Pages 1 to 4)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 5		Page 7	
1	INDEX (continued)	1	APPEARANCES
2		2	
3	Defendant's Exhibit No. 18 109	3	ON BEHALF OF THE PLAINTIFF:
4	Defendant's Exhibit No. 19 112	4	JIMMY JACOBS, Esquire
5	Defendant's Exhibit No. 20 113	5	4137 Carmichael Road
6	Defendant's Exhibit No. 21 114	6	Suite 100
7	Defendant's Exhibit No. 22 115	7	Montgomery, Alabama 36106
8	Defendant's Exhibit No. 23 116	8	(334) 215-1788
9	Defendant's Exhibit No. 24 118	9	
10	Defendant's Exhibit No. 25 119	10	ON BEHALF OF THE DEFENDANT:
11	Defendant's Exhibit No. 26 131	11	M. JEFFERSON STARLING, III, Esquire
12	Defendant's Exhibit No. 27 132	12	MONICA B. GRAVELINE, Esquire
13	Defendant's Exhibit No. 28 136	13	BALCH & BINGHAM, LLP
14	Defendant's Exhibit No. 29 149	14	1710 Sixth Avenue North
15	Defendant's Exhibit No. 30 150	15	Birmingham, Alabama 35203
16	Defendant's Exhibit No. 31 151	16	(205) 226-3406
17	Defendant's Exhibit No. 32 153	17	
18	Defendant's Exhibit No. 33 154	18	ALSO PRESENT:
19	Defendant's Exhibit No. 34 154	19	KEN DEMARKO, Army Fleet Support
20	Defendant's Exhibit No. 35 155	20	Representative
21	Defendant's Exhibit No. 36 156	21	
22	Defendant's Exhibit No. 37 156	22	*****
23	Defendant's Exhibit No. 38 156	23	
Page 6		Page 8	
1	INDEX (continued)	1	I, CYNTHIA M. NOAKES, a Court Reporter
2		2	of Eufaula, Alabama, acting as Commissioner,
3	Defendant's Exhibit No. 39 158	3	certify that on this date, as provided by the
4	Defendant's Exhibit No. 40 160	4	Alabama Rules of Civil Procedure and the
5	Defendant's Exhibit No. 41 160	5	foregoing stipulation of counsel, there came
6	Defendant's Exhibit No. 42 161	6	before me at the Offices of HOLIDAY INN EXPRESS,
7	Defendant's Exhibit No. 43 161	7	1006 Boll Weevil Circle, Enterprise, Alabama
8	Defendant's Exhibit No. 44 162	8	36330, beginning at 9 a.m., SAMUEL HOUSTON,
9	Defendant's Exhibit No. 45 163	9	witness in the above cause, for oral examination,
10	Defendant's Exhibit No. 46 176	10	whereupon the following proceedings were had:
11	Defendant's Exhibit No. 47 177	11	
12	Reporter's Certificate 180	12	SAMUEL HOUSTON,
13		13	being first duly sworn, was examined and
14		14	testified as follows:
15		15	
16		16	THE COURT REPORTER: Usual
17		17	stipulations?
18		18	MR. JACOBS: Yes.
19		19	MR. STARLING: Sure.
20	*****	20	
21		21	EXAMINATION
22		22	BY MR. STARLING:
23		23	Q. Mr. Houston, have you ever been deposed

2 (Pages 5 to 8)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 9</p> <p>1 before?</p> <p>2 A. (No response.)</p> <p>3 Q. We're in a deposition today. Have you ever</p> <p>4 been in this setting before?</p> <p>5 A. No, I haven't.</p> <p>6 Q. Okay. Just some kind of background</p> <p>7 information: I'm going to be asking questions</p> <p>8 today for you to answer. You're sworn under oath</p> <p>9 at this point in time. Do you understand that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. If you don't understand the question, please</p> <p>12 ask me to rephrase it; I'll be happy to.</p> <p>13 A. I will.</p> <p>14 Q. We've got a court reporter here who is</p> <p>15 taking a transcript of this. That requires you</p> <p>16 answer verbally, so head nods and uh-huhs will not</p> <p>17 work. It's a natural human reaction to do that.</p> <p>18 So at times I may ask you, "Was that a yes</p> <p>19 or a no?" just so it will be clear. So if you'll</p> <p>20 try to do that, that will help us move along</p> <p>21 quicker today.</p> <p>22 Is there anything that would prevent you</p> <p>23 from testifying truthfully today?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Strange environment, different bed.</p> <p>2 Q. You stayed in a hotel last night?</p> <p>3 A. Upstairs.</p> <p>4 Q. Oh, here at this hotel?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. Suffering from schizophrenia?</p> <p>7 A. No.</p> <p>8 Q. Manic depression?</p> <p>9 A. No.</p> <p>10 Q. Do you have any bipolar disorder?</p> <p>11 A. No.</p> <p>12 Q. In good mental health?</p> <p>13 A. Yes.</p> <p>14 Q. Any history of any of those mental disorders</p> <p>15 - schizophrenia, bipolar disorder, anything of</p> <p>16 that nature?</p> <p>17 A. No.</p> <p>18 Q. Are you currently taking any medications?</p> <p>19 A. Yes, I am.</p> <p>20 Q. What medications are you taking?</p> <p>21 A. I have a list here.</p> <p>22 Q. Okay. Okay. I think what we'll do is mark</p> <p>23 that as Defendant's Exhibit 1 to this deposition,</p>
<p style="text-align: right;">Page 10</p> <p>1 A. No.</p> <p>2 Q. Anything that would prevent you from</p> <p>3 testifying to the fullest extent of your knowledge</p> <p>4 today?</p> <p>5 A. No.</p> <p>6 Q. Are you taking any drugs or alcohol</p> <p>7 currently that would affect your ability to</p> <p>8 testify truthfully and to the fullest extent of</p> <p>9 your knowledge?</p> <p>10 A. No.</p> <p>11 Q. Any mental problems that would prevent you</p> <p>12 from testifying truthfully today and to the</p> <p>13 fullest extent of your knowledge?</p> <p>14 A. No.</p> <p>15 Q. Any physical problems that would prevent you</p> <p>16 from testifying truthfully today or to the fullest</p> <p>17 extent of your knowledge?</p> <p>18 A. No.</p> <p>19 Q. Have any trouble sleeping last night?</p> <p>20 A. Yes.</p> <p>21 Q. What happened last night?</p> <p>22 A. Just didn't get a good night's sleep.</p> <p>23 Q. Because of the deposition or anything else?</p>	<p style="text-align: right;">Page 12</p> <p>1 and when we get an opportunity we can make a copy</p> <p>2 of it.</p> <p>3 (Defendant's Exhibit No. 1 was</p> <p>4 marked for identification and a</p> <p>5 copy of the same is attached</p> <p>6 hereto.)</p> <p>7 Q. Okay. Mr. Houston, I've got in front of me</p> <p>8 what we've marked as Defendant's Exhibit No. 1,</p> <p>9 and this appears to be a list of drugs that you</p> <p>10 are currently taking; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. And I see you have them broken down into</p> <p>13 what looks like four categories. The first one</p> <p>14 has 13 different drugs on it. What are those</p> <p>15 drugs for?</p> <p>16 A. Okay. Number one is Glucophage. I'm a</p> <p>17 diabetic, type 2. Number two is Lexapro. That is</p> <p>18 for my anxiety and depression. Number three is</p> <p>19 Tricor. That's for -- I'm thinking here -- the</p> <p>20 high blood pressure. It's a statin drug. Keeps</p> <p>21 cholesterol down. Cymbalta is for my pain</p> <p>22 management for my spinal problem. Lyrica is pain</p> <p>23 management for my spinal problem. Ecotrin is a</p>

3 (Pages 9 to 12)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 13	Page 15
<p>1 baby aspirin for heart attack prevention.</p> <p>2 Prinivil is for my blood pressure. Ambien is for</p> <p>3 getting a good night's sleep. The Doryx is for an</p> <p>4 infection of my scalp. The Zyrtec-D is for a</p> <p>5 sinus problem. The Robinul is for my scalp</p> <p>6 problem. The Lidoderm patches are for my lower</p> <p>7 back -- muscular problems. And I'm going to</p> <p>8 slaughter the pronunciation of this; it's --</p> <p>9 Q. Why don't you just spell it?</p> <p>10 A. C-L-O-B-E-T-A-S-O-L P-R-O-P-I-O-N-A-T-E.</p> <p>11 And that is topical solution for the itch in my</p> <p>12 scalp. Pain medications taken as needed: Lortab,</p> <p>13 which I no longer take because it makes me itch.</p> <p>14 I have a reaction to it. The Vicodin, which I no</p> <p>15 longer take because it doesn't work; and the</p> <p>16 OxyContin, which I very rarely take, maybe once a</p> <p>17 month, due to the highly addictive nature of the</p> <p>18 drug and that I am very aware of this medicine's</p> <p>19 problems.</p> <p>20 Q. Which pain is that for?</p> <p>21 A. Lower back. And I also have a pain in my</p> <p>22 shoulder.</p> <p>23 Dietary supplements taken daily:</p>	<p>1 Q. But you were not taking any of the pain</p> <p>2 medications before that?</p> <p>3 A. Right. I was not on any medication prior to</p> <p>4 that -- pain medications.</p> <p>5 Q. Pain medications, correct. You had some</p> <p>6 medications for some other problems you've had;</p> <p>7 but the pain medications, not until you had the</p> <p>8 back surgery that you started taking those?</p> <p>9 A. Right. Afterwards.</p> <p>10 Q. And none of these drugs affect your ability</p> <p>11 to remember anything or testify truthfully today?</p> <p>12 A. Remember? Well, no, I can remember.</p> <p>13 Q. And nothing would affect your ability to</p> <p>14 testify truthfully?</p> <p>15 A. That's correct.</p> <p>16 Q. Have you -- in the past, have you taken</p> <p>17 Zoloft and other drugs of that nature?</p> <p>18 A. I was on Zoloft; and I got off it and I went</p> <p>19 to the Lexapro.</p> <p>20 Q. How often do you take the -- I see out here,</p> <p>21 just so I can be clear, on this Defendant's</p> <p>22 Exhibit 1, you've got beside each drug a</p> <p>23 milligrams and what appears to be the time you</p>
Page 14	Page 16
<p>1 Glucosamine and Chondroitin with MSM; Evening Prim</p> <p>2 Rose Oil; Cinnamon; and a diabetic health pack by</p> <p>3 Nature Made.</p> <p>4 And I also take this medication for stomach</p> <p>5 pain as needed: Phenergan.</p> <p>6 Q. What is the stomach problem?</p> <p>7 A. I had a GERD, a hiatal hernia with a reflex.</p> <p>8 And I had that for 14 years and I was on</p> <p>9 medication for it. And back about '97, I had a</p> <p>10 surgery to fix it. And if, say, I was to get sick</p> <p>11 and I needed to vomit, well I cannot vomit because</p> <p>12 of the Lap Nissen knot. What they do is they take</p> <p>13 your stomach and wrap it around your esophagus and</p> <p>14 tie a knot there. Well, if I was to try to vomit,</p> <p>15 I'd break the knot and end up back in surgery. So</p> <p>16 the Phenergan takes care of any need for me to ...</p> <p>17 Q. Okay. Had you been taking any of the pain</p> <p>18 medications prior to the back surgery you had in,</p> <p>19 what was it, 2004?</p> <p>20 A. No.</p> <p>21 Q. Was it 2004 or '5 that you had the back</p> <p>22 surgery?</p> <p>23 A. I can't remember exactly.</p>	<p>1 take it each day; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. So, for example, on the first one --</p> <p>4 A. The Glucophage.</p> <p>5 Q. You take 850 milligrams twice daily?</p> <p>6 A. That's correct. Once in the morning and</p> <p>7 once in the evening.</p> <p>8 Q. Have you ever been involved in any other</p> <p>9 type of litigation, other than this case?</p> <p>10 A. I hired Bender & Bender to represent me for</p> <p>11 my Social Security Disability.</p> <p>12 Q. When was that?</p> <p>13 A. Last year.</p> <p>14 Q. Okay. And did you apply for Social Security</p> <p>15 Disability?</p> <p>16 A. Yes.</p> <p>17 Q. And what did you hire them to do?</p> <p>18 A. Represent me.</p> <p>19 Q. And what was the result of your application</p> <p>20 for Social Security Disability?</p> <p>21 A. It's in progress right now.</p> <p>22 Q. The claim has not been resolved one way or</p> <p>23 the other?</p>

4 (Pages 13 to 16)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 17	Page 19
<p>1 A. This is true.</p> <p>2 Q. Was there any initial denial of the claim?</p> <p>3 A. No, not yet.</p> <p>4 Q. When did you end up filing the application?</p> <p>5 A. This past summer.</p> <p>6 Q. Do you know if that is a document that you</p> <p>7 have produced to us already?</p> <p>8 A. I believe not. I don't believe I've</p> <p>9 produced any documents to that.</p> <p>10 Q. Did you complete an application for Social</p> <p>11 Security Disability?</p> <p>12 A. Yes, I have.</p> <p>13 Q. What is your claim for Social Security</p> <p>14 Disability based on?</p> <p>15 A. My lower back and my shoulder, and my feet</p> <p>16 and my diabetes and my neuropathy.</p> <p>17 Q. What is neuropathy?</p> <p>18 A. A lack of sense of feeling due to diabetes.</p> <p>19 Q. It's a result of the diabetes?</p> <p>20 A. Yes.</p> <p>21 Q. Where do you have the lack of sensations or</p> <p>22 feelings?</p> <p>23 A. From my tips of my toes all the way up to my</p>	<p>1 Q. Felonies or misdemeanors. I wouldn't</p> <p>2 include speeding tickets.</p> <p>3 A. No.</p> <p>4 Q. For example, have you been arrested for DUI</p> <p>5 before?</p> <p>6 A. No, I have not.</p> <p>7 Q. Where did you grow up?</p> <p>8 A. Where did I grow up? I was a military brat;</p> <p>9 I grew up all over the world.</p> <p>10 Q. Where did you attend high school?</p> <p>11 A. I attended high school -- the first high</p> <p>12 school I went to was Clearwater Central Catholic,</p> <p>13 then I went to Boca Ciega, and then I went to</p> <p>14 Seminole, all in Pinellas County, Florida, the St.</p> <p>15 Petersburg area down there.</p> <p>16 Q. Which one did you graduate from?</p> <p>17 A. Seminole.</p> <p>18 Q. Was your father in the military?</p> <p>19 A. Yes, he was.</p> <p>20 Q. What did he do?</p> <p>21 A. He was in the Coast Guard for 31 years.</p> <p>22 Q. After you graduated from high school, what</p> <p>23 did you do?</p>
Page 18	Page 20
<p>1 hips.</p> <p>2 Q. So in making your Social Security Disability</p> <p>3 claim, it was the back, the shoulder -- you had,</p> <p>4 what, rotator cuff surgery on the shoulder?</p> <p>5 A. Yes.</p> <p>6 Q. And your diabetes?</p> <p>7 A. Yes.</p> <p>8 Q. And they have not responded to you?</p> <p>9 A. No, they have not.</p> <p>10 Q. Did they give you any type of deadline of</p> <p>11 when they will respond?</p> <p>12 A. No.</p> <p>13 Q. Other than your application for your Social</p> <p>14 Security Disability, have you been involved in any</p> <p>15 other type of litigation? For example, as a</p> <p>16 witness?</p> <p>17 A. No.</p> <p>18 Q. As a party to any other type of litigation?</p> <p>19 A. No.</p> <p>20 Q. Have you ever been charged with any crimes</p> <p>21 or arrested?</p> <p>22 A. No. Excuse me. When you say "crimes," do</p> <p>23 you mean felonies?</p>	<p>1 A. I went to Pinellas Vocational Technical</p> <p>2 Institute to be an auto mechanic.</p> <p>3 Q. What year did you graduate high school?</p> <p>4 A. '75.</p> <p>5 Q. And you studied to be an auto mechanic at</p> <p>6 Pinellas Vocation Technical School?</p> <p>7 A. Yes.</p> <p>8 Q. How long did you do that?</p> <p>9 A. About two years.</p> <p>10 Q. Did you end up with any degree or graduate?</p> <p>11 A. Yeah, I graduated.</p> <p>12 Q. What was your degree in?</p> <p>13 A. Oh, I didn't get a degree; it was just a</p> <p>14 diploma type.</p> <p>15 Q. What did you do after that?</p> <p>16 A. Joined the Air Force.</p> <p>17 Q. Where were you stationed first in the Air</p> <p>18 Force?</p> <p>19 A. Kadena Air Base, Okinawa, Japan.</p> <p>20 Q. How long were you there?</p> <p>21 A. About two and a half years.</p> <p>22 Q. How long did you stay in the Air Force all</p> <p>23 together?</p>

5 (Pages 17 to 20)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 21</p> <p>1 A. 24 years, two months, 16 days.</p> <p>2 Q. What was the highest rank you achieved?</p> <p>3 A. E-7, Master Sergeant.</p> <p>4 Q. And what was your specialty?</p> <p>5 A. I was an aircraft maintenance technician.</p> <p>6 Q. What did you do as an aircraft maintenance</p> <p>7 technician?</p> <p>8 A. I did aircraft maintenance; all phases of</p> <p>9 aircraft maintenance, from minor maintenance to</p> <p>10 major maintenance to anything that needed to be</p> <p>11 done in the way of my career field.</p> <p>12 Q. Any particular type of aircraft?</p> <p>13 A. Yes. I worked F-4s, and then I worked</p> <p>14 A-10s, then I worked F-16s. That's about it.</p> <p>15 Q. When you reached the level of E-7, is that</p> <p>16 what you were before you retired, or is that the</p> <p>17 highest level?</p> <p>18 A. That's the highest level, yes.</p> <p>19 Q. How long were you an E-7?</p> <p>20 A. From '97 to '01.</p> <p>21 Q. Those years that you just described, '97 to</p> <p>22 '01, what were your duties when you were an E-7</p> <p>23 then?</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. I assume, in the Air Force, you received</p> <p>2 certification in certain technical areas. I don't</p> <p>3 need an unlimited list, but, in general, what type</p> <p>4 of certifications or special training did you</p> <p>5 receive?</p> <p>6 A. Like social action training, EOT, human</p> <p>7 relations training, management, or I would call</p> <p>8 supervisor leadership courses, official Air Force</p> <p>9 management courses, NCO what they call</p> <p>10 professional military education courses,</p> <p>11 leadership courses, the NCO Academy courses.</p> <p>12 All these courses are there to polish up the</p> <p>13 skills you already have.</p> <p>14 Q. And just for the benefit of our record here,</p> <p>15 NCO is noncommissioned officer?</p> <p>16 A. That's correct.</p> <p>17 Q. And all of those training courses were in</p> <p>18 addition to, I assume, the technical aircraft</p> <p>19 maintenance training you had received years</p> <p>20 before?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Are you currently married?</p> <p>23 A. Yes, I am.</p>
<p style="text-align: right;">Page 22</p> <p>1 For example, did you have any supervisory</p> <p>2 responsibilities?</p> <p>3 A. Oh, yes. I was in management.</p> <p>4 Q. Can you generally describe what your duties</p> <p>5 were?</p> <p>6 A. I ran a phase dock -- phase inspection.</p> <p>7 Q. And what does that mean?</p> <p>8 A. We have aircraft that are required for</p> <p>9 "periodical" maintenance to come into a hangar;</p> <p>10 and they get dismantled, inspected, serviced, ops</p> <p>11 check all the necessary operational checks,</p> <p>12 reassembled and test flown. And I oversaw all of</p> <p>13 that.</p> <p>14 Q. How many people did you supervise in that</p> <p>15 position?</p> <p>16 A. On the books, I was authorized 35. I was</p> <p>17 authorized 35 people.</p> <p>18 Q. Is that typically how many you ended up</p> <p>19 having?</p> <p>20 A. No. What you're authorized and what you</p> <p>21 have assigned are ...</p> <p>22 Q. How many did you have assigned?</p> <p>23 A. About 18.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. And what is your spouse's name?</p> <p>2 A. Brigitte. It's spelled the French way:</p> <p>3 B-R-I-G-I-T-T-E.</p> <p>4 Q. How long have you been married?</p> <p>5 A. Since '83.</p> <p>6 Q. Were you married previously?</p> <p>7 A. No, I have not been married previously.</p> <p>8 Q. This is your first and only marriage?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have any children?</p> <p>11 A. Yes, I do.</p> <p>12 Q. How old are they?</p> <p>13 A. 20 and 22.</p> <p>14 Q. Do they live in Alabama?</p> <p>15 A. No, they don't.</p> <p>16 Q. Do you have any relatives living in Alabama?</p> <p>17 A. I have one relative that lives up in a Arab,</p> <p>18 Alabama, the north part of Alabama; but nobody in</p> <p>19 the southern part of Alabama.</p> <p>20 Q. Does your wife currently work?</p> <p>21 A. Yes, she does.</p> <p>22 Q. What does she do?</p> <p>23 A. She is an office manager/biller and coder</p>

6 (Pages 21 to 24)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 25</p> <p>1 for three doctors.</p> <p>2 Q. What is the name of the practice group?</p> <p>3 A. (No response.)</p> <p>4 Q. Or do you know the name of the three</p> <p>5 doctors?</p> <p>6 A. Oh, I know the name of the three doctors.</p> <p>7 Q. Can you tell me them?</p> <p>8 A. Dr. Alec Schmidt.</p> <p>9 Q. S-C-H-M-I-D-T?</p> <p>10 A. Yes. Dr. Wayne Justice, and Dr. Kit Kuss.</p> <p>11 Q. What type of practice is it?</p> <p>12 A. General.</p> <p>13 Q. And where are they located?</p> <p>14 A. Niceville. Twin City Hospitals complex.</p> <p>15 Q. Where do you currently reside?</p> <p>16 A. 4765 Coronado Circle, Crestview, Florida</p> <p>17 32539.</p> <p>18 Q. How long have you been at that address?</p> <p>19 A. Since '97.</p> <p>20 Q. Are you a member of any church?</p> <p>21 A. Yes, I am.</p> <p>22 Q. What church is that?</p> <p>23 A. Our Lady of Victory.</p>	<p style="text-align: right;">Page 27</p> <p>1 A. Documents supplied by my attorney.</p> <p>2 Q. And were those documents you had previously</p> <p>3 given your attorney?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know if you have produced all of</p> <p>6 those documents to us, if we have been given</p> <p>7 copies of those documents?</p> <p>8 A. You would have to ask my attorney.</p> <p>9 MR. STARLING: Do you want to go off</p> <p>10 the record just for a second?</p> <p>11 (An off-the-record discussion</p> <p>12 was held.)</p> <p>13 MR. STARLING: Counsel confirmed that</p> <p>14 Plaintiff has not reviewed any documents that have</p> <p>15 not been produced by the defendant to the</p> <p>16 plaintiff or by the plaintiff to the defendant.</p> <p>17 (BY MR. STARLING)</p> <p>18 Q. Did you meet with your attorney prior to</p> <p>19 today to prepare for this deposition?</p> <p>20 A. Yes.</p> <p>21 Q. Approximately how long did you meet with</p> <p>22 him?</p> <p>23 A. About two and a half hours yesterday.</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. And where is that located?</p> <p>2 A. Crestview, Florida.</p> <p>3 Q. A member of any civic or social groups?</p> <p>4 A. Does a shooting club be considered a social</p> <p>5 group?</p> <p>6 Q. Sure.</p> <p>7 A. The Herbert Field Shooting Club.</p> <p>8 Q. Is that like skeet shooting?</p> <p>9 A. No, it's no skeet; it's just a rifle and</p> <p>10 pistol range.</p> <p>11 Q. Is that something you participate in?</p> <p>12 A. When I can.</p> <p>13 Q. Are you still doing it now?</p> <p>14 A. I haven't currently done it in about a year.</p> <p>15 Q. Any particular reason?</p> <p>16 A. No.</p> <p>17 Q. Did you do anything to prepare for your</p> <p>18 deposition today?</p> <p>19 A. Define "prepare."</p> <p>20 Q. Did you review any documents to prepare for</p> <p>21 today?</p> <p>22 A. Yes.</p> <p>23 Q. What all did you review?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. What year did you get out of the military?</p> <p>2 A. '01.</p> <p>3 Q. What was your reason for leaving?</p> <p>4 A. High year tenure.</p> <p>5 Q. What does that mean?</p> <p>6 A. That means if you stay in one rank long</p> <p>7 enough, you have reached what the military calls,</p> <p>8 "high year tenure." If you do not progress to the</p> <p>9 next rank, you have to get out at that year of</p> <p>10 grade, year in grade and time.</p> <p>11 So that means if I spent 24 years as a</p> <p>12 Master Sergeant E-7 in the Air Force, I had</p> <p>13 reached my high year tenure and I could not stay</p> <p>14 in the Air Force any longer.</p> <p>15 Q. What would be the next grade after E-7?</p> <p>16 A. Senior Master Sergeant, E-8.</p> <p>17 Q. Is that something you applied for?</p> <p>18 A. No. It's testable.</p> <p>19 Q. Like a written test?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Did you attempt to test it?</p> <p>22 A. Yes.</p> <p>23 Q. And did not pass, I take it?</p>

7 (Pages 25 to 28)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 29</p> <p>1 A. That's right.</p> <p>2 Q. What did you do after you retired from the</p> <p>3 Air Force?</p> <p>4 A. I went to work for Discount Auto Parts as a</p> <p>5 cashier and counterperson.</p> <p>6 Q. Where was that?</p> <p>7 A. At Fort Walton Beach.</p> <p>8 Q. Let me hand you what I'm going to mark as</p> <p>9 Exhibit 2.</p> <p>10 (Defendant's Exhibit No. 2 was</p> <p>11 marked for identification and a</p> <p>12 copy of the same is attached</p> <p>13 hereto.)</p> <p>14 Q. I will tell you that this is a copy of your</p> <p>15 response to interrogatories that the defendant may</p> <p>16 have had served on you.</p> <p>17 If you will look on page 9, you'll see a</p> <p>18 signature blank for your name. Is that your</p> <p>19 signature?</p> <p>20 A. Yes, it is.</p> <p>21 Q. And is all the information provided in your</p> <p>22 responses to these interrogatories true and</p> <p>23 correct?</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Okay. All my earnings. The sources of my</p> <p>2 earnings?</p> <p>3 Q. Correct. And maybe we can start with: Have</p> <p>4 you been employed anywhere else since your</p> <p>5 employment with AFS terminated?</p> <p>6 A. No, I haven't.</p> <p>7 Q. Have you sought employment anywhere else?</p> <p>8 A. Yes, I have.</p> <p>9 Q. Where all have you sought employment?</p> <p>10 A. I've gone to JobsPlus in Crestview, Florida.</p> <p>11 Q. And what is JobsPlus?</p> <p>12 A. It's the employment agency that's run by the</p> <p>13 State of Florida.</p> <p>14 Q. Did you complete an application there?</p> <p>15 A. Yes. I filled out an application online to</p> <p>16 their computer system.</p> <p>17 Q. And have they submitted your application to</p> <p>18 any employers?</p> <p>19 A. Not that I know of.</p> <p>20 Q. Have you interviewed with any employers?</p> <p>21 A. No.</p> <p>22 Q. What type of job were you seeking through</p> <p>23 JobsPlus?</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Yes, it is.</p> <p>2 Q. Starting on the first page, Question No. 2</p> <p>3 says to identify all employers you've worked with</p> <p>4 in the past ten years. I see the Air Force, then</p> <p>5 Discount Auto Parts, Chromalloy Gas Turbin, Army</p> <p>6 Fleet Support Fort Rucker.</p> <p>7 Are those all the employers you've worked</p> <p>8 for since you retired from the Air Force?</p> <p>9 A. Yes.</p> <p>10 Q. Not any additional ones?</p> <p>11 A. No.</p> <p>12 Q. Do you recall your last day of work with the</p> <p>13 defendant, AFS, the date of it?</p> <p>14 A. It's September --</p> <p>15 Q. Let me ask you this question: What I'd like</p> <p>16 you to do is list all your earnings that you have</p> <p>17 had since the time your employment with AFS ended.</p> <p>18 A. Could you rephrase that question, please?</p> <p>19 Q. Can you tell me all of your earnings that</p> <p>20 you've had since your employment with AFS</p> <p>21 terminated?</p> <p>22 A. After my employment?</p> <p>23 Q. Correct.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Aviation related jobs.</p> <p>2 Q. So in the aviation industry?</p> <p>3 A. Yes.</p> <p>4 Q. Are there any --</p> <p>5 MR. STARLING: Hold on just a second.</p> <p>6 (An off-the-record discussion</p> <p>7 was held.)</p> <p>8 (BY MR. STARLING)</p> <p>9 Q. Are you aware of any aviation jobs near the</p> <p>10 area where you live?</p> <p>11 A. Yes. I was contacted by the Veterans Center</p> <p>12 in JobsPlus and referred to Crestview Aerospace</p> <p>13 for a possible hiring on a CH-47 program that</p> <p>14 Crestview Aerospace was spinning up.</p> <p>15 Q. And did you interview for that job?</p> <p>16 A. No, I didn't.</p> <p>17 Q. Did you submit an application for it?</p> <p>18 A. Yes, I did.</p> <p>19 Q. And am I to assume that you did not get that</p> <p>20 job?</p> <p>21 A. Correct.</p> <p>22 Q. Did they provide you with any reason?</p> <p>23 A. No.</p>

8 (Pages 29 to 32)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 33</p> <p>1 Q. How did you learn that you did not get it?</p> <p>2 A. I made inquiries of Crestview Aerospace.</p> <p>3 Q. And they simply said they were not hiring?</p> <p>4 A. They hired somebody a week before my</p> <p>5 application made it to their desk.</p> <p>6 Q. Are you aware of your application being</p> <p>7 submitted by JobsPlus to any other employers?</p> <p>8 A. Just the Crestview Aerospace. Because they</p> <p>9 are the only aviation -- well, they're not the</p> <p>10 only aviation industry there, but the primary one.</p> <p>11 Q. What other ones are there?</p> <p>12 A. A few.</p> <p>13 Q. Have you -- how far away are you from Fort</p> <p>14 Rucker?</p> <p>15 A. It was 96 miles from my front door to the</p> <p>16 time clock at Cairns ATTC.</p> <p>17 Q. Would you seek employment at Fort Rucker</p> <p>18 now, or are you?</p> <p>19 A. No.</p> <p>20 Q. Because of distance or other reasons?</p> <p>21 A. Other reasons.</p> <p>22 Q. And what reasons are those?</p> <p>23 A. May I speak to my lawyer?</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. An aircraft mechanic job?</p> <p>2 A. Yes.</p> <p>3 Q. When did you seek that job?</p> <p>4 A. During the summer of '05, I believe.</p> <p>5 Somewhere thereabouts. No. I can't remember. I</p> <p>6 take that back.</p> <p>7 Q. Just to refresh your memory, in your</p> <p>8 Complaint, you allege that in August of '04 is</p> <p>9 when you went out from work from AFS with the back</p> <p>10 injury.</p> <p>11 A. Uh-huh.</p> <p>12 Q. And then you had surgery in November of</p> <p>13 2004?</p> <p>14 A. Yes.</p> <p>15 Q. And then in March of 2005 is when you were</p> <p>16 placed on a form of administrative leave from AFS;</p> <p>17 no longer an active employee, I guess?</p> <p>18 A. That's correct.</p> <p>19 Q. So given those dates, when is it that you</p> <p>20 think you applied with Crestview Aerospace?</p> <p>21 A. Later on that year.</p> <p>22 Q. In 2005?</p> <p>23 A. Yes.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. I mean, unless it's some privileged</p> <p>2 conversation, I would ask that you answer the</p> <p>3 question.</p> <p>4 MR. JACOBS: Would you repeat the</p> <p>5 question?</p> <p>6 MR. STARLING: I said: Is there some</p> <p>7 reason you're not seeking employment at somewhere</p> <p>8 in Fort Rucker?</p> <p>9 MR. JACOBS: If you can answer, go</p> <p>10 ahead and answer.</p> <p>11 A. I no longer can work in the workforce.</p> <p>12 Q. In any capacity?</p> <p>13 A. In any capacity; that's correct.</p> <p>14 Q. Was there a job you could have performed at</p> <p>15 the company you named earlier that you submitted</p> <p>16 an application to?</p> <p>17 A. Yes. Prior to this decision being made.</p> <p>18 Q. What job were you seeking at that company?</p> <p>19 I'm sorry. What was the name of it, the one in</p> <p>20 Crestview?</p> <p>21 A. Crestview Aerospace.</p> <p>22 Q. What type of job were you seeking there?</p> <p>23 A. It was a job to work with the CH-47 program.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. And at the time that you applied then, did</p> <p>2 you think that you could perform an aircraft</p> <p>3 maintenance job?</p> <p>4 A. Yes.</p> <p>5 Q. Was I understanding your testimony a little</p> <p>6 while ago, you no longer believe you're capable of</p> <p>7 performing that aircraft maintenance job?</p> <p>8 A. That's true.</p> <p>9 Q. When was that change in your position?</p> <p>10 A. When the Veterans Administration -- I filed</p> <p>11 a claim to the Veterans Administration, and I was</p> <p>12 deemed totally and permanently disabled by them,</p> <p>13 and unemployable.</p> <p>14 Q. And do you consider yourself unemployable at</p> <p>15 this stage?</p> <p>16 A. Yes, I do.</p> <p>17 Q. So we're clear on the record, is it your</p> <p>18 position that there is no job that you can perform</p> <p>19 at this point in time?</p> <p>20 A. That's correct.</p> <p>21 Q. And that's because of your varying ailments,</p> <p>22 or is it because of one in particular?</p> <p>23 A. Varying ailments.</p>

9 (Pages 33 to 36)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 37</p> <p>1 Q. And the reason I asked that: Earlier you 2 listed you have the back problem and a shoulder 3 problem as well as diabetes. 4 Is it your position -- does your diabetes 5 prevent you from performing any job at this point 6 in time? 7 A. No. 8 Q. Does your back prevent you from performing 9 any job at this time? 10 A. The restrictions based upon my back do, yes. 11 Q. What are the restrictions currently? 12 A. I can't lift anything more than 25 pounds; I 13 can no longer stand -- I can't stand for more than 14 an hour and a half; I can't sit for more than an 15 hour and a half; no bending or twisting at the 16 waist; no pushing or pulling; no climbing; no 17 crawling. 18 To the best of my knowledge, that's the crux 19 of it. 20 Q. So is it your position that the diabetes, in 21 conjunction with the back problem, is what 22 prohibits you from being -- 23 A. There's a lot of people in the world who</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. For example, climbing? 2 A. Yes. 3 Q. Which shoulder is it, by the way? 4 A. My left shoulder. 5 Q. How did you injure that? 6 A. I've got four torn rotator cuffs to my 7 credit. 8 Q. How long ago was your first one? 9 A. I don't remember. It was at the time I was 10 in the service. 11 Q. Was the Crestview Aerospace job the last one 12 that you are aware that you submitted application 13 for? 14 A. Yes. 15 Q. Did you stop searching after that point in 16 time? 17 A. No. 18 Q. How much longer did you search for another 19 job? 20 A. I don't remember. 21 Q. Until you received the -- 22 A. The determination from the VA that I was 23 permanently and totally disabled.</p>
<p style="text-align: right;">Page 38</p> <p>1 have diabetes and they are very productive members 2 of society. If diabetes was the only problem I 3 had, I would be a productive member of the 4 workforce. 5 Q. Does your shoulder cause you to have 6 limitations on your ability to work? 7 A. Yes, it does. 8 Q. What type of limitations does it create? 9 A. Physical limitations; carrying limitations, 10 in the way of being able to carry any kind of 11 loads. 12 Q. Are those in addition to the limitations you 13 were just listing for me related to your back? 14 A. Yes. Separate from my back. 15 Q. Can you give me specifically the limitations 16 you have from your shoulder? 17 A. Certain movements I can't do. 18 Q. For example? 19 A. Lifting anything above my shoulders, 20 reaching behind my back, carrying any substantial 21 weight or anything more than 25 pounds in my hand 22 or in my arm, anything that has to do with 23 supporting my body or my body weight.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. At that point in time, you stopped your job 2 search? 3 A. Yes, sir. 4 Q. Do you recall when that was? 5 A. No, I don't. 6 Q. Do you think it was in 2005? 7 A. I don't remember. I'm not very good with 8 remembering dates and times. 9 Q. Has it been more than a year? 10 A. Yes, I think it has been more than a year. 11 Q. Other than JobsPlus and the Crestview 12 Aerospace, can you recall any other specific 13 efforts to seek a job since you went on inactive 14 status at AFS? 15 A. Asking friends if they needed any help, you 16 know, doing odd jobs, things like that. 17 Q. What other sources of income have you had 18 since you went on inactive status with AFS? 19 A. I had the -- the union supplies an 20 insurance. Gosh, all I can remember is that AFLAC 21 commercial on TV. 22 Q. Some type of disability insurance? 23 A. Disability insurance, yes, sir. They supply</p>

10 (Pages 37 to 40)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 41</p> <p>1 70 percent of your base pay via a check from 2 Fortis. 3 Q. Fortis benefits? 4 A. Yes, Fortis benefits. I received those 5 while I was on the short-term disability. After 6 that ran out, I filed for unemployment 7 compensation in the State of Alabama. 8 Q. So Fortis was the insurance carrier for the 9 short-term disability benefits? 10 A. Yes. It was a benefit supplied by the 11 union. 12 Q. And those lasted approximately from the time 13 you went out until about March of 2005 when you 14 went on inactive status? 15 A. About that. I don't really remember. I 16 can't remember. 17 Q. How much was the short-term disability 18 benefits? 19 A. That I do remember. It was 900 and some-odd 20 dollars. 21 Q. Each month? 22 A. Yes. I'm not sure. I'm not sure if it was 23 each month or two weeks. I can't remember, sir.</p>	<p style="text-align: right;">Page 43</p> <p>1 minute -- concurrent receipt bill that was passed 2 after the Civil War that applied to military 3 veterans. 4 There is a program where, if you are 5 receiving money from, say, the Air Force, and you 6 are receiving benefits from the VA, you give up 7 one dollar for each dollar that you submit. But 8 this counterbalances that; and you receive your 9 what they call a CRDP check, eliminating the 10 inaccuracy of the payment system. 11 Q. How much is it for each month? 12 A. I believe it's \$1,000. 13 Q. Do you also receive pension payments? 14 A. No. 15 Q. How old are you now? 16 A. Fifty-one. 17 Q. When will you start receiving your pension 18 benefits from the military? 19 A. I started as soon as I retired. But since 20 I'm 100 percent total and permanent, I give up my 21 Air Force retirement check to the VA, and the VA 22 pays me back. 23 Q. And that's the purpose of the CRDP?</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. It was approximately 70 percent of your pay? 2 A. Yes, sir. 3 Q. Have you ever received any long-term 4 disability benefits? 5 A. No. 6 Q. And from the VA, how much do you receive 7 from the VA? 8 A. I receive now from the VA \$2900 from the VA. 9 Q. Per month? 10 A. Per month. I believe it's 2956, to be 11 exact. 12 Q. Do you receive any other type of benefits? 13 A. I have a CRDP payment. 14 Q. What is that? 15 A. Oh, boy. It is -- let me think. 16 Consecutive -- I'll give you a definition of what 17 it means. I don't know what the acronym means 18 right now. 19 A CRD payment is paid by DFAS, which is 20 Defense Finance & Accounting Service, to veterans 21 who are over 20 years in the service and retired. 22 It is a makeup pay, if you want to call it that, 23 or a differential pay, due to the -- wait a</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Right. To make up the differential loss. 2 Q. Any other benefit payments that you 3 currently receive? 4 A. No. 5 Q. So just to summarize, currently you receive 6 a VA check of approximately \$2,956 per month and a 7 CRDP check of approximately \$1,000 a month? 8 A. I may be wrong on -- yes, that's right. 9 That's about right. 10 Q. Any other source of income you've had since 11 March of 2005? 12 A. That I've earned, no. 13 Q. How long has your wife been working at her 14 current job? 15 A. I don't know. I'm not going to give you -- 16 Q. More than three years? 17 A. Yes, sir, more than three years. 18 Q. More than five years maybe? 19 A. Less than five years. 20 Q. Are your kids in college or are they out of 21 college now? 22 A. They are not in college. 23 Q. Are they out on their own?</p>

11 (Pages 41 to 44)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 45</p> <p>1 A. No.</p> <p>2 Q. Do you continue to support them?</p> <p>3 A. Yes.</p> <p>4 Q. What are they currently doing?</p> <p>5 A. My oldest daughter has bought a route with</p> <p>6 FedEx Ground, bought a delivery truck, and she</p> <p>7 runs her own business as a FedEx Ground truck</p> <p>8 driver.</p> <p>9 Q. Where is she living?</p> <p>10 A. Living at my home.</p> <p>11 Q. And then --</p> <p>12 A. My youngest daughter is currently working at</p> <p>13 the Hilton Hotel and is waiting to take her test</p> <p>14 as a massage therapist to get her state license.</p> <p>15 Q. Where does she live?</p> <p>16 A. With me, same residence.</p> <p>17 Q. Did you help your daughter start the FedEx</p> <p>18 route?</p> <p>19 A. Yes.</p> <p>20 Q. Financially supported her?</p> <p>21 A. Yes.</p> <p>22 Q. By the way, if you need to take a break</p> <p>23 during the deposition, just let me know.</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. Was there any specific job title for that</p> <p>2 job?</p> <p>3 A. Aircraft mechanic.</p> <p>4 Q. Let me hand you what I'm going to mark as</p> <p>5 Exhibit 3.</p> <p>6 (Defendant's Exhibit No. 3 was</p> <p>7 marked for identification and a</p> <p>8 copy of the same is attached</p> <p>9 hereto.)</p> <p>10 Q. If you'll look at the very last page, page</p> <p>11 7, it appears to be signatures on that page. Are</p> <p>12 those signatures yours?</p> <p>13 A. Yes, they are.</p> <p>14 Q. And is this the application you completed</p> <p>15 for Army Fleet Support?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And is everything on there true and correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. Go to page 4, if you would, please.</p> <p>20 A. (Witness complies.)</p> <p>21 Q. On the employment history, the first one is</p> <p>22 DynCorp with Fort Rucker, and it says "aircraft</p> <p>23 mechanic."</p>
<p style="text-align: right;">Page 46</p> <p>1 Generally it is appropriate to take them after you</p> <p>2 finish answering a particular question. But let</p> <p>3 me know if you need to go to the restroom or</p> <p>4 anything of that nature.</p> <p>5 A. Thank you. I certainly will.</p> <p>6 Q. When you first started work, was your</p> <p>7 employment with DynCorp your first employment at</p> <p>8 Fort Rucker?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And did you go to work at DynCorp in</p> <p>11 February of 2002?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And then I believe that AFS took over that</p> <p>14 contract at Fort Rucker at the beginning of</p> <p>15 November of 2003. Does that sound correct?</p> <p>16 A. Sounds correct.</p> <p>17 Q. And did you apply for a job with AFS when</p> <p>18 they took over that contract?</p> <p>19 A. Yes. There was applications that we had to</p> <p>20 fill out.</p> <p>21 Q. And at the time you were at DynCorp, you</p> <p>22 were an aircraft mechanic?</p> <p>23 A. Yes, sir.</p>	<p style="text-align: right;">Page 48</p> <p>1 What did you do in that job?</p> <p>2 A. Everything my boss wanted me to do.</p> <p>3 Q. Describe your general duties that you did on</p> <p>4 a day-to-day basis there.</p> <p>5 A. Towed aircraft, refueled aircraft, did minor</p> <p>6 maintenance, major maintenance.</p> <p>7 Q. What type of aircraft were those?</p> <p>8 A. Helicopters.</p> <p>9 Q. And were you part of a team that would take</p> <p>10 apart the helicopter?</p> <p>11 A. Yes, I worked on a team.</p> <p>12 Q. Okay. And it was primarily a maintenance</p> <p>13 and mechanical job?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Were you in any type of supervisory</p> <p>16 position?</p> <p>17 A. No, I was not.</p> <p>18 Q. At Discount Auto Parts, it says</p> <p>19 cashier/counter parts man.</p> <p>20 Did you have any supervisory</p> <p>21 responsibilities there?</p> <p>22 A. No, sir.</p> <p>23 Q. Primarily a sales position?</p>

12 (Pages 45 to 48)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 49	Page 51
<p>1 A. Yes. Run the cash register and helping out</p> <p>2 on the back counter.</p> <p>3 Q. Then the next page, Chromalloy Gas Turbine</p> <p>4 Company, quality assurance inspector.</p> <p>5 What were your duties in that position?</p> <p>6 A. Had to read a micrometer.</p> <p>7 Q. What is that?</p> <p>8 A. A precision instrument for measuring metals.</p> <p>9 Q. What type of measurements?</p> <p>10 A. Internal diameters, external diameters,</p> <p>11 extreme precise measurements that get down to</p> <p>12 tenths of thousandths of an inch.</p> <p>13 Q. What did y'all make at Chromalloy?</p> <p>14 A. We manufactured nonspinning parts of turbin</p> <p>15 engines, gas jet engines.</p> <p>16 Q. For military jets?</p> <p>17 A. Civilian and military.</p> <p>18 Q. So you were in the quality assurance</p> <p>19 department?</p> <p>20 A. Yes, sir.</p> <p>21 Q. So y'all were running tests on the quality</p> <p>22 of the parts y'all were making?</p> <p>23 A. This is correct.</p>	<p>1 have any type of certification of the number of</p> <p>2 words per minute you could type?</p> <p>3 A. No.</p> <p>4 Q. Have you ever done that?</p> <p>5 A. I did take a typing test once -- twice.</p> <p>6 Q. When was that?</p> <p>7 A. March. Between March the 7th and up until</p> <p>8 the 14th, I was practicing my typing skills.</p> <p>9 Q. Of what year?</p> <p>10 A. '05.</p> <p>11 Q. Between March 7th and March 14th of 2005,</p> <p>12 you were practicing your typing skills?</p> <p>13 A. Brushing up on my typing skills.</p> <p>14 Q. Did you have your words per minute certified</p> <p>15 by anyone?</p> <p>16 A. At JobsPlus, no.</p> <p>17 Q. Anywhere else?</p> <p>18 A. No.</p> <p>19 Q. Have you ever had any type of formal</p> <p>20 certification of words per minute?</p> <p>21 A. No.</p> <p>22 Q. Did you just time yourself?</p> <p>23 A. No. There's a computer program that you</p>
Page 50	Page 52
<p>1 Q. Did you work at Discount Auto Parts twice?</p> <p>2 A. Yes. I worked full time/part time while I</p> <p>3 was working at Chromalloy; and then when I got</p> <p>4 laid off at Chromalloy, I went back to full time.</p> <p>5 Q. Okay. I'm going to hand you what I'm going</p> <p>6 to mark as Exhibit 4.</p> <p>7 (Defendant's Exhibit No. 4 was</p> <p>8 marked for identification and a</p> <p>9 copy of the same is attached</p> <p>10 hereto.)</p> <p>11 Q. I want to go back. Was Exhibit 3 a true and</p> <p>12 correct copy of the application you submitted to</p> <p>13 Army Fleet Support?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Can you tell us what Exhibit 4 is?</p> <p>16 A. Looks like my resume.</p> <p>17 Q. Is this one that you submitted to Army Fleet</p> <p>18 Support?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And is all the information on there true and</p> <p>21 correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. You have computer skills on here. Did you</p>	<p>1 type, and it tells you how many words per minute</p> <p>2 you typed.</p> <p>3 Q. Where is that program?</p> <p>4 A. At JobsPlus.</p> <p>5 Q. At JobsPlus?</p> <p>6 A. In Crestview.</p> <p>7 Q. Did you do that?</p> <p>8 A. Yes.</p> <p>9 Q. What were your results on it?</p> <p>10 A. 30 words per minute.</p> <p>11 Q. Does it give you any type of printout, or it</p> <p>12 just tells you?</p> <p>13 A. It tells you. And then there's another</p> <p>14 printed typing test that you take that prints out</p> <p>15 the results.</p> <p>16 Q. Did you do that as well?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Also 30 words per minute?</p> <p>19 A. Yes.</p> <p>20 Q. And did you do a general application for</p> <p>21 JobsPlus?</p> <p>22 A. A general application?</p> <p>23 Q. Did you fill out an application when you</p>

13 (Pages 49 to 52)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 53	Page 55
<p>1 went to JobsPlus?</p> <p>2 A. I filled out the computer program.</p> <p>3 Q. Online?</p> <p>4 A. Online, yeah.</p> <p>5 Q. Was there a place that asked about the</p> <p>6 number of words typed a minute?</p> <p>7 A. No. I don't remember.</p> <p>8 Q. Did you ever submit that information to</p> <p>9 JobsPlus in any way?</p> <p>10 A. I'm sorry. Could you pose that question</p> <p>11 again, please?</p> <p>12 Q. You said you can type 30 words per -- Strike</p> <p>13 that.</p> <p>14 You've testified that, at JobsPlus, you took</p> <p>15 a computer-based test of words per minute; and it</p> <p>16 came out at 30 words per minute, correct?</p> <p>17 A. This is true.</p> <p>18 Q. Did you ever submit that information or</p> <p>19 provide that information on any of the</p> <p>20 applications that you submitted to JobsPlus?</p> <p>21 A. No.</p> <p>22 Q. Or to anyone else, for that matter?</p> <p>23 A. No.</p>	<p>1 center?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Is that also where you applied for</p> <p>4 unemployment compensation?</p> <p>5 A. No.</p> <p>6 Q. Where did you apply for unemployment</p> <p>7 compensation?</p> <p>8 A. Here in Enterprise.</p> <p>9 Q. At the Alabama Unemployment Comp Office?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did you fill out any kind of job application</p> <p>12 there?</p> <p>13 A. I don't remember. I probably did.</p> <p>14 Q. You applied for unemployment benefits?</p> <p>15 A. Yes, sir.</p> <p>16 Q. To your knowledge -- well, you don't recall</p> <p>17 whether or not you filled out an application at</p> <p>18 the Alabama Unemployment Comp Office?</p> <p>19 A. I don't remember.</p> <p>20 Q. Did you search for employment through any</p> <p>21 Alabama employment agency at all?</p> <p>22 A. I spoke to the veteran officer there.</p> <p>23 Q. And they directed you to JobsPlus in</p>
Page 54	Page 56
<p>1 Q. So I guess if someone is looking at your</p> <p>2 file, there's no way to determine how many words</p> <p>3 per minute you can type, based on the paper in the</p> <p>4 file?</p> <p>5 A. Are you talking about my resume here?</p> <p>6 Q. Correct.</p> <p>7 A. That's correct.</p> <p>8 Q. Do you know if the 30 words per minute is</p> <p>9 recorded anywhere in any records of AFS or</p> <p>10 JobsPlus?</p> <p>11 A. No.</p> <p>12 MR. STARLING: Have we received any</p> <p>13 JobsPlus applications from you-all?</p> <p>14 MR. JACOBS: Let's go off the record.</p> <p>15 MR. STARLING: Yeah.</p> <p>16 (An off-the-record discussion</p> <p>17 was held.)</p> <p>18 (BY MR. STARLING)</p> <p>19 Q. Did you ever go into a JobsPlus office</p> <p>20 actually, or just do everything online?</p> <p>21 A. I went into a JobsPlus office, signed in,</p> <p>22 filled out an application online.</p> <p>23 Q. Did you fill it out online at the JobsPlus</p>	<p>1 Florida?</p> <p>2 A. I don't remember.</p> <p>3 Q. Did they provide any job opportunities to</p> <p>4 you when you talked to them?</p> <p>5 A. I don't remember.</p> <p>6 Q. What was your rate of pay at AFS the last</p> <p>7 time you were actively employed?</p> <p>8 A. 19 dollars some-odd cents an hour.</p> <p>9 Q. Did you work significant overtime?</p> <p>10 A. Please define "significant."</p> <p>11 Q. Were you working overtime every week?</p> <p>12 A. One to two hours maybe.</p> <p>13 Q. Was that pretty much standard?</p> <p>14 A. Yes, sir. At ATTC, we didn't get a lot of</p> <p>15 overtime.</p> <p>16 Q. Who was your last supervisor at AFS?</p> <p>17 A. Mark Pesa.</p> <p>18 Q. How do you spell his last name?</p> <p>19 A. P-E-S-A.</p> <p>20 Q. And who was your supervisor before that?</p> <p>21 A. Bill Warnick.</p> <p>22 Q. Did you have any other direct supervisors at</p> <p>23 AFS?</p>

14 (Pages 53 to 56)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 57	Page 59
<p>1 A. Other than my lead man, no.</p> <p>2 Q. Who was your lead man?</p> <p>3 A. Marvin Harold.</p> <p>4 Q. Let me show you a document that I'll mark as</p> <p>5 Defendant's Exhibit 5.</p> <p>6 (Defendant's Exhibit No. 5 was</p> <p>7 marked for identification and a</p> <p>8 copy of the same is attached</p> <p>9 hereto.)</p> <p>10 Q. Do you recognize the document I've marked as</p> <p>11 Defendant's Exhibit No. 5?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Is this the job description for the aircraft</p> <p>14 mechanic position at AFS?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Would you take a look at that and see if you</p> <p>17 agree with the essential duties and</p> <p>18 responsibilities of that position?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Is that generally descriptive of the duties</p> <p>21 of an aircraft mechanic at AFS?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Were you in any position other than aircraft</p>	<p>1 Q. Did you keep any copy of that?</p> <p>2 A. No.</p> <p>3 Q. How did you submit that to Crestview</p> <p>4 Aerospace?</p> <p>5 A. I went to the HR office; I filled out the --</p> <p>6 well, excuse me. I had an outstanding application</p> <p>7 on record, and I gave them an updated resume.</p> <p>8 Q. When had you originally applied at Crestview</p> <p>9 Aerospace?</p> <p>10 A. Back in '97.</p> <p>11 Q. In 1997?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. Excuse me. Wrong. '01.</p> <p>15 Q. 2001?</p> <p>16 A. Yes.</p> <p>17 Q. Before you went to work for DynCorp?</p> <p>18 A. Yes.</p> <p>19 Q. Did you call up the HR department and say</p> <p>20 you'd like to apply again?</p> <p>21 A. I just went there in person.</p> <p>22 Q. And they still had that on record?</p> <p>23 A. Yeah. I periodically, like once a year,</p>
Page 58	Page 60
<p>1 mechanic while you were at AFS?</p> <p>2 A. No, sir.</p> <p>3 Q. That was the only job classification you</p> <p>4 had?</p> <p>5 A. Yes, sir.</p> <p>6 Q. It appears you injured your back on August</p> <p>7 the 11th of 2004; is that correct?</p> <p>8 A. I don't remember, sir, the exact date.</p> <p>9 Q. How did you hurt your back?</p> <p>10 A. I don't remember.</p> <p>11 Q. It was not a work-related injury, was it?</p> <p>12 A. No. It was not at work, no.</p> <p>13 MR. JACOBS: Let me suggest a break.</p> <p>14 If you want to go ahead and answer that first.</p> <p>15 Q. If you want to go ahead and finish up, a</p> <p>16 break might be helpful.</p> <p>17 A. A break would be good.</p> <p>18 Q. Okay.</p> <p>19 (A brief recess was taken.)</p> <p>20 (BY MR. STARLING)</p> <p>21 Q. Do you have a copy of the application you</p> <p>22 submitted to Crestview Aerospace?</p> <p>23 A. No.</p>	<p>1 went up there, on the date that I filled out the</p> <p>2 initial application, and renewed it, kept it</p> <p>3 updated.</p> <p>4 Q. What about any application you filled out</p> <p>5 for JobsPlus? Do you have any copy of that?</p> <p>6 A. No. It's electronic. It's on their system.</p> <p>7 Q. So it would be on their electronic system</p> <p>8 only?</p> <p>9 A. Yes, sir.</p> <p>10 Q. You did not fill out any hard paper</p> <p>11 application at JobsPlus?</p> <p>12 A. Not that I know of.</p> <p>13 Q. Let's go back to your back injury. Do you</p> <p>14 recall that being in August of 2004?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. How did that come about that you had the</p> <p>17 back problem?</p> <p>18 A. My daughter's nightstand bottom drawer</p> <p>19 wouldn't open up. She had it out in the garage</p> <p>20 and she was refinishing it, and she wanted to pull</p> <p>21 the bottom drawer out. And I bent over and tried</p> <p>22 getting the drawer out, and it wouldn't come. And</p> <p>23 that's when I injured my back.</p>

15 (Pages 57 to 60)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 61	Page 63
<p>1 Q. Had you had any back problems prior to that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Had you had any surgery prior to that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Had those been while you were in the</p> <p>6 service?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What type of back problems had you had?</p> <p>9 A. I had a discectomy of my L4-L5.</p> <p>10 Q. Do you recall that, basically, you stopped</p> <p>11 working for AFS on about September 2nd of 2004?</p> <p>12 A. Did you say the 2nd or the 7th?</p> <p>13 Q. I said 2nd. September 2, 2004.</p> <p>14 A. I don't remember. No, I don't remember.</p> <p>15 Q. I'm going to hand you what I'm going to mark</p> <p>16 as Exhibit 6.</p> <p>17 (Defendant's Exhibit No. 6 was</p> <p>18 marked for identification and a</p> <p>19 copy of the same is attached</p> <p>20 hereto.)</p> <p>21 Q. Do you recognize this document?</p> <p>22 A. Yes, sir, I do.</p> <p>23 Q. Is this the short-term disability claim form</p>	<p>1 guess, to be submitted with the Fortis benefits</p> <p>2 claim?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you recall whether you were the one who</p> <p>5 attached that or whether it was sent to AFS</p> <p>6 directly by Dr. Kosmatka?</p> <p>7 A. I believe I had Dr. Kosmatka -- it looks</p> <p>8 like Dr. Kosmatka filled it out and I sent it in.</p> <p>9 Q. On here, on the first page, on about the</p> <p>10 second line down, it looks like date last worked</p> <p>11 is 9/2/04. Is that what that says?</p> <p>12 A. Up here?</p> <p>13 Q. Correct.</p> <p>14 A. Okay. Yes, that's correct.</p> <p>15 Q. It looks like number of hours worked that</p> <p>16 day, eight hours. So that indicates you actually</p> <p>17 worked on September 2nd of 2004, it appears?</p> <p>18 A. Yes.</p> <p>19 Q. And is that your recollection?</p> <p>20 A. Yes, sir.</p> <p>21 Q. It appears, down here near the bottom, date</p> <p>22 symptoms first appeared, 11 August of '04.</p> <p>23 That's when you were talking about the</p>
Page 62	Page 64
<p>1 that you completed for Fortis?</p> <p>2 A. Yes, sir, it is.</p> <p>3 Q. And is that your signature on the bottom of</p> <p>4 that first page?</p> <p>5 A. Yes, sir, it is.</p> <p>6 Q. Is this your handwriting on the document?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Both the -- on the first page?</p> <p>9 A. Yes, it is.</p> <p>10 Q. On the second page, that's not your</p> <p>11 handwriting, is it?</p> <p>12 A. No, it's not.</p> <p>13 Q. Is that a doctor's statement that you</p> <p>14 attached to the application?</p> <p>15 A. Looks like a doctor's signature at the</p> <p>16 bottom.</p> <p>17 Q. It looks like it's physician Timothy</p> <p>18 Kosmatka?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Was that your treating physician at the</p> <p>21 time?</p> <p>22 A. Yes, sir.</p> <p>23 Q. It appears that he completed this form, I</p>	<p>1 bottom drawer of the dresser that your daughter</p> <p>2 had?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. And you ended up being qualified to</p> <p>5 receive those benefits from Fortis?</p> <p>6 A. Yes.</p> <p>7 Q. And that's the ones we were talking about</p> <p>8 earlier?</p> <p>9 A. Yes. I was wrong on the amount of money</p> <p>10 that Fortis gave me. It was \$794.40. Well,</p> <p>11 excuse me.</p> <p>12 Q. I see. It looks like here you were earning</p> <p>13 at that time 794.40 a week?</p> <p>14 A. Right.</p> <p>15 Q. And your benefit was 556.08 a week?</p> <p>16 A. Right.</p> <p>17 Q. That's what you recall?</p> <p>18 A. Yes. The previous conversation we had about</p> <p>19 the amount of money I got from Fortis, I told you</p> <p>20 the wrong number.</p> <p>21 Q. So this number is what you recall, this</p> <p>22 556.08 a week?</p> <p>23 A. Yes, sir. I just wanted to make sure that</p>

16 (Pages 61 to 64)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

<p style="text-align: right;">Page 65</p> <p>1 was clear.</p> <p>2 Q. Thank you. I'm going to show you what I'm</p> <p>3 going to mark as Defendant's Exhibit No. 7.</p> <p>4 (Defendant's Exhibit No. 7 was</p> <p>5 marked for identification and a</p> <p>6 copy of the same is attached</p> <p>7 hereto.)</p> <p>8 Q. Do you recognize the document I've marked as</p> <p>9 Defendant's Exhibit No. 7?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And does that appear to be a supplementary</p> <p>12 report of benefits for Fortis?</p> <p>13 A. Yes, it is.</p> <p>14 Q. And is that your signature on the bottom</p> <p>15 there?</p> <p>16 A. Yes, it is.</p> <p>17 Q. And it looks like this is something you</p> <p>18 completed for Fortis on December 13th of 2004,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. On No. 12, it says, "Have you discussed</p> <p>22 returning to work with your doctor?" And you</p> <p>23 checked, "Yes." But there's nothing there that</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. And I guess you had to certify that you were</p> <p>2 unable to work at that particular point in time,</p> <p>3 correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And I guess you continued your application</p> <p>6 through March of '05, when the benefits finally</p> <p>7 ended?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Let me show you what I'm marking as Exhibit</p> <p>10 8.</p> <p>11 (Defendant's Exhibit No. 8 was</p> <p>12 marked for identification and a</p> <p>13 copy of the same is attached</p> <p>14 hereto.)</p> <p>15 Q. Have you seen the document I've marked as</p> <p>16 Defendant's Exhibit No. 8?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Was this a separate disability policy being</p> <p>19 applied for?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Do you know who -- where did the Minnesota</p> <p>22 Life come from? Was that something you had on</p> <p>23 your own?</p>
<p style="text-align: right;">Page 66</p> <p>1 says -- it says, "If 'Yes,' what did he/she</p> <p>2 advise."</p> <p>3 Do you recall what you discussed with your</p> <p>4 doctor at that time?</p> <p>5 A. No, I don't remember.</p> <p>6 MR. JACOBS: I'm sorry. Just to</p> <p>7 clarify, this note says, "Sometime in March '05."</p> <p>8 Block No. 8. Is that what you were asking about?</p> <p>9 MR. STARLING: No. I was asking about</p> <p>10 Block No. 12.</p> <p>11 MR. JACOBS: Okay. I'm sorry.</p> <p>12 Q. On Block No. 8, it says, "Do you expect to</p> <p>13 return to work?" "Yes." And you wrote in,</p> <p>14 "Sometime in March '05." Is that your</p> <p>15 handwriting?</p> <p>16 A. Yes.</p> <p>17 Q. So you were anticipating returning to work</p> <p>18 in March of '05?</p> <p>19 A. Yes, I was.</p> <p>20 Q. Is that -- did you have to periodically</p> <p>21 submit these supplemental reports for benefits to</p> <p>22 Fortis?</p> <p>23 A. Yes, sir.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. I believe it was a life insurance policy</p> <p>2 that came through either Army Fleet Support or the</p> <p>3 union, sir. And I remember the form. I remember</p> <p>4 dropping off the form at the doctor's office.</p> <p>5 Q. This is Dr. Manski?</p> <p>6 A. Yes, sir.</p> <p>7 Q. M-A-N-S-K-I?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Now, what type of doctor is he?</p> <p>10 A. He was the neurosurgeon that performed my</p> <p>11 last back surgery.</p> <p>12 Q. And who is Dr. Kosmatka?</p> <p>13 A. He was my primary care manager at Eglin Air</p> <p>14 Force Base Hospital.</p> <p>15 Q. Not a neurosurgeon?</p> <p>16 A. Just a medical doctor.</p> <p>17 Q. Dr. Manski did your surgery?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And this appears to have been dated, on the</p> <p>20 second page, by Dr. Manski on March the 2nd of</p> <p>21 2005. Does that seem right to you?</p> <p>22 A. Yes, sir.</p> <p>23 Q. I notice up above, on the second page, under</p>

17 (Pages 65 to 68)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 69	Page 71
<p>1 the "Progress" section, it says, "If recovered, 2 date released to return to work." "2/24/05." 3 Do you recall Dr. Manski saying that you 4 would be released to work at that point in time? 5 A. I don't remember. I don't remember. 6 Q. Right below that progress note it says, "Is 7 patient disabled and unable to perform his/her 8 regular work?" And it says, "Yes. No heavy 9 mechanical aircraft work." 10 Is that the way you read that? 11 A. Yes, sir. 12 Q. At that time, could you do your aircraft 13 mechanic job? 14 A. On February 24, '05, I was still 15 convalescing from the surgery. 16 Q. And so you could not do the job? 17 A. That is correct. 18 Q. Did you discuss this report from Dr. Manski 19 with any of the people at AFS? 20 A. No, sir. 21 Q. Could you do any other jobs at this point in 22 time? 23 A. I was still recovering. I was still</p>	<p>1 A. No, sir. 2 Q. Did you understand, at this point in time, 3 that your 26 weeks of short-term disability was 4 going to end around March the 10th, or a week or 5 so later? 6 A. Yes, sir. 7 Q. Did you understand that you were required to 8 reclassify before that time, if you were going to 9 reclassify a job position? 10 MR. JACOBS: Object to the form of the 11 question. Answer it if you can. 12 Q. Did you understand that you were required to 13 reclassify to another job position, if you wished 14 to seek one, prior to March the 10th of 2005? 15 A. Do I understand that I was supposed to 16 reclassify prior to 10 March? 17 Q. Correct. 18 A. No. 19 Q. What was your understanding of what you were 20 supposed to do as of March the 10th at AFS? 21 A. I had to bring in a doctor's slip with my 22 restrictions, ask to reclassify at that time, fill 23 out the paperwork for the reclassification, and</p>
Page 70	Page 72
<p>1 convalescing from the surgery, going through 2 physical therapy. 3 Q. So you could not? 4 A. Not at that time. I was still in recovery, 5 doing the physical therapy. 6 Q. When did you recover enough that you could 7 perform a job, if you have? 8 A. When my doctor released me. 9 Q. When was that? 10 A. In March. 11 Q. Which doctor would that have been? 12 A. That would be Thomas Manski, my 13 neurosurgeon. 14 Q. Not Kosmatka? 15 A. No. Let me clarify something with you with 16 Kosmatka. In the military, TriCare Prime, for 17 retirees, you go to him, as in Kosmatka, get a 18 referral to the neurosurgeon, and then you become 19 a patient of the neurosurgeon. 20 Q. So like an HMO, basically? 21 A. Correct. 22 Q. Did you seek any reclassification with AFS 23 at this point in time?</p>	<p>1 then go through procedures of reclassification, 2 and then go to my next job. 3 Q. Did you do that? 4 A. No, that did not happen. 5 Q. Did you bring in the doctor's note? 6 A. Yes, I did. 7 Q. And that was the doctor's note from Dr. 8 Manski? 9 A. Correct. 10 Q. And did you seek to reclassify? 11 A. I brought in the doctor's note the first 12 time, and it was missing the return-to-work date. 13 So I had to go back down to Fort Walton Beach to 14 Dr. Manski's office and get one that had a 15 return-to-work date on it. 16 Q. And he provided one to you? 17 A. Yes, he did. 18 Q. And did it have the restrictions on it? 19 A. It most definitely did, yes, sir. 20 Q. When did you bring in the slip the first 21 time? 22 A. I believe it was the 7th. 23 Q. Of March 2005?</p>

18 (Pages 69 to 72)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 73	Page 75
<p>1 A. Yes, sir.</p> <p>2 Q. And when did you bring back a note with a</p> <p>3 return-to-work date?</p> <p>4 A. The 14th of March.</p> <p>5 Q. Were you unable to get it before March the</p> <p>6 10th?</p> <p>7 A. I stopped by at the HR office the 11th,</p> <p>8 walked in, asked them about being a day late on</p> <p>9 the 10th. And they said, Don't worry about it.</p> <p>10 You come in next Monday and bring in your</p> <p>11 return-to-work slip with the correct date on it,</p> <p>12 and you can come back to work Monday.</p> <p>13 Q. And did you return that Monday?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And you think that was March the 14th?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Who did you meet with on March 10th? I'm</p> <p>18 sorry. March the 11th.</p> <p>19 A. An HR representative. I do not remember the</p> <p>20 person's name.</p> <p>21 Q. Where did you meet with them?</p> <p>22 A. In the HR office in Daleville.</p> <p>23 Q. When you originally brought the note in that</p>	<p>1 And that was it.</p> <p>2 Q. And what is your recollection of the</p> <p>3 discussions at that point in time?</p> <p>4 A. My recollection is -- what I remember is I</p> <p>5 asked if I could reclassify, because I wanted to</p> <p>6 go into scheduling; and I was told that I was not</p> <p>7 allowed to go back in my old job as an aircraft</p> <p>8 mechanic, so then I could not reclassify.</p> <p>9 And I asked them, Well, why can't I go into</p> <p>10 my old job for one day, right now, so I can</p> <p>11 reclassify, fill out the paperwork? And they</p> <p>12 said, No.</p> <p>13 I asked them for reclassification paperwork</p> <p>14 and they refused to give it to me.</p> <p>15 Q. On the 7th, when you met with an HR</p> <p>16 representative, was it a male or a female?</p> <p>17 A. I believe it was a female.</p> <p>18 Q. Do you remember the race of that person?</p> <p>19 A. No, I don't.</p> <p>20 Q. Or any other details of that person?</p> <p>21 A. Just a female, a woman.</p> <p>22 Q. On the 11th, did you meet with a male or a</p> <p>23 female?</p>
Page 74	Page 76
<p>1 didn't have the release, that was March the 7th,</p> <p>2 you believe?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And who did you meet with at that point in</p> <p>5 time?</p> <p>6 A. An HR representative.</p> <p>7 Q. Also at Daleville?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What happened when you came to work on the</p> <p>10 14th?</p> <p>11 A. I was told that I was going to be fired.</p> <p>12 Q. And who told you that?</p> <p>13 A. One of the HR representatives.</p> <p>14 Q. Which was also in Daleville?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you recall, was it a man or a woman?</p> <p>17 A. Both a man and a woman were there.</p> <p>18 Q. What race were they, white or black?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you remember any other details about</p> <p>21 them?</p> <p>22 A. They were a man and woman -- there was two</p> <p>23 women, possibly three, that were there, one man.</p>	<p>1 A. It was a woman.</p> <p>2 Q. And do you remember her race or any other</p> <p>3 details?</p> <p>4 A. I don't remember her race.</p> <p>5 Q. There's no real dispute here that at the</p> <p>6 time you returned on the 14th, you were unable to</p> <p>7 do an aircraft mechanic job, right?</p> <p>8 A. I had restrictions placed upon me by my</p> <p>9 neurosurgeon, Dr. Manski. And it was explained to</p> <p>10 me that I would not be able to perform the duties</p> <p>11 of an aircraft mechanic.</p> <p>12 And I agreed that, due to my physical</p> <p>13 limitations placed upon me by my neurosurgeon,</p> <p>14 that it would not be in my best interest to be an</p> <p>15 aircraft mechanic anymore and that I would like to</p> <p>16 go into the aircraft scheduling position.</p> <p>17 Q. The limitations at that time were permanent?</p> <p>18 A. Yes, sir, they were permanent. On the</p> <p>19 return-to-work slip that was dated that day that I</p> <p>20 brought it in, the restrictions were permanent</p> <p>21 from Dr. Manski.</p> <p>22 Q. And just so we're clear on the record, you</p> <p>23 agree that based on those restrictions, you could</p>

19 (Pages 73 to 76)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 77	Page 79
<p>1 not do an aircraft mechanic job?</p> <p>2 A. Yes, sir.</p> <p>3 Q. But you believed that you could do an</p> <p>4 aircraft scheduler job?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Have you seen one of these reclassification</p> <p>7 forms before?</p> <p>8 A. Never saw one.</p> <p>9 Q. They are available from the HR office, I</p> <p>10 believe. You understood that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. I also understand they were available out in</p> <p>13 the field as well. Were you aware of that?</p> <p>14 A. No.</p> <p>15 Q. So you have never filled out a</p> <p>16 reclassification form?</p> <p>17 A. That is correct, sir.</p> <p>18 Q. I'm going to hand you what I'm going to mark</p> <p>19 as Exhibit 9.</p> <p>20 (Defendant's Exhibit No. 9 was</p> <p>21 marked for identification and a</p> <p>22 copy of the same is attached</p> <p>23 hereto.)</p>	<p>1 to make sure that I was qualified 100 percent for</p> <p>2 this job.</p> <p>3 Q. And that's when you say you went to JobsPlus</p> <p>4 and did the typing?</p> <p>5 A. Yes, sir. Brushed up on my typing skills at</p> <p>6 JobsPlus.</p> <p>7 Q. And how did you demonstrate -- how would you</p> <p>8 demonstrate -- Just strike that.</p> <p>9 Is there any type of typing test there at</p> <p>10 the HR office?</p> <p>11 A. I do not know.</p> <p>12 Q. How did you plan to demonstrate your typing</p> <p>13 skills when you submitted a reclassification?</p> <p>14 A. I was going to bring in a piece of paper</p> <p>15 from JobsPlus that said that I could type 30 words</p> <p>16 a minute and show them that document and apply for</p> <p>17 the aircraft scheduling job at the same time.</p> <p>18 Q. But you didn't have any type of document</p> <p>19 from JobsPlus, did you?</p> <p>20 A. Not when I took a look at this on the 11th.</p> <p>21 Q. Or on the 14th?</p> <p>22 A. No. Because I was told that I was going to</p> <p>23 get terminated.</p>
Page 78	Page 80
<p>1 Q. Do you recognize the document I've marked as</p> <p>2 Defendant's Exhibit 9?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Is this the job description for the aircraft</p> <p>5 scheduler position?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And where have you seen that before?</p> <p>8 A. HR office.</p> <p>9 Q. And when did you see that?</p> <p>10 A. The 11th of March.</p> <p>11 Q. Who provided that to you?</p> <p>12 A. The HR representative.</p> <p>13 Q. And did you ask for a reclassification form</p> <p>14 at that point in time?</p> <p>15 A. No.</p> <p>16 Q. Why not?</p> <p>17 A. Because down here on "Education and</p> <p>18 Experience: Must demonstrate ability to</p> <p>19 accurately keyboard at 30 words per minute on a</p> <p>20 computer."</p> <p>21 Q. So ...</p> <p>22 A. I felt that I needed to brush up on my</p> <p>23 typing skills prior to submitting the paperwork,</p>	<p>1 Q. Right. But you didn't bring any document</p> <p>2 with you on the 14th?</p> <p>3 A. That's correct, sir.</p> <p>4 Q. I remember you testified earlier you didn't</p> <p>5 have any type of printout from JobsPlus, right?</p> <p>6 A. Right.</p> <p>7 Q. Other than that, was it your position that</p> <p>8 you could meet these other requirements on the</p> <p>9 aircraft scheduler position?</p> <p>10 A. Oh, yes, sir.</p> <p>11 Q. Did any of the restrictions you have prevent</p> <p>12 you from doing any of these duties or</p> <p>13 responsibilities on the aircraft scheduler</p> <p>14 position?</p> <p>15 A. No, sir.</p> <p>16 Q. What does an aircraft scheduler do?</p> <p>17 A. An aircraft scheduler coordinates between</p> <p>18 the flying side of the house and the maintenance</p> <p>19 side of the house and brings those two agencies</p> <p>20 together so they can make a flying schedule.</p> <p>21 The flying side of the house have certain</p> <p>22 training requirements that have to be met on their</p> <p>23 side of the house; the maintenance says these are</p>

20 (Pages 77 to 80)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 81	Page 83
<p>1 the aircraft we have available that can fly. And</p> <p>2 you marry them up, print out a schedule, you sign</p> <p>3 it, and there you go.</p> <p>4 Q. Primarily clerical, it sounds like?</p> <p>5 A. Yes.</p> <p>6 Q. Office-type work?</p> <p>7 A. Sedentary.</p> <p>8 Q. Sedentary. Let me hand you what I'm going</p> <p>9 to mark as Defendant's Exhibit No. 10.</p> <p>10 (Defendant's Exhibit No. 10 was</p> <p>11 marked for identification and a</p> <p>12 copy of the same is attached</p> <p>13 hereto.)</p> <p>14 Q. Do you recognize that document I've marked</p> <p>15 as Defendant's Exhibit No. 10?</p> <p>16 A. Yes, sir.</p> <p>17 Q. It appears to be a letter from Darlene</p> <p>18 Sanders at AFS to you on February 8, 2005?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do you recall receiving that letter?</p> <p>21 A. I recall receiving this letter and giving it</p> <p>22 to my wife, because she handles the finances of</p> <p>23 our family.</p>	<p>1 Q. What did you understand that to mean?</p> <p>2 A. Administrative termination means that I am</p> <p>3 going to be terminated from my employment from</p> <p>4 Army Fleet Support.</p> <p>5 Q. Now, the second sentence reads: "This</p> <p>6 change is for administrative reasons only and will</p> <p>7 not affect your rights in accordance with article</p> <p>8 4.6(d) of the Collective Bargaining Agreement."</p> <p>9 Do you see that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. What did you understand to be your rights</p> <p>12 under 4.6(d) of the Collective Bargaining</p> <p>13 Agreement?</p> <p>14 A. If I'm understanding the article correctly,</p> <p>15 I believe that pertains to my callback rights to</p> <p>16 my job as an aircraft mechanic.</p> <p>17 Q. After being laid off, essentially recall</p> <p>18 rights?</p> <p>19 A. Yes, sir, being called back.</p> <p>20 Q. Now, are you familiar with the term</p> <p>21 "administrative termination"?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you understood that to mean completely</p>
Page 82	Page 84
<p>1 Q. All right. Did you read the letter?</p> <p>2 A. Yes, I did.</p> <p>3 Q. Let me hand you what I'll mark as</p> <p>4 Defendant's Exhibit No. 11.</p> <p>5 (Defendant's Exhibit No. 11 was</p> <p>6 marked for identification and a</p> <p>7 copy of the same is attached</p> <p>8 hereto.)</p> <p>9 Q. Do you recognize the document I've marked as</p> <p>10 Defendant's Exhibit No. 11?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And is that a letter that you received?</p> <p>13 A. I don't remember receiving the letter,</p> <p>14 but ...</p> <p>15 Q. The letter is familiar to you?</p> <p>16 A. Yes. The letter is familiar, yes, sir.</p> <p>17 Q. Look on what I've marked as Defendant's</p> <p>18 Exhibit No. 10.</p> <p>19 Do you see that language at the very first</p> <p>20 sentence: "Your status will be changed on or</p> <p>21 around 03/14/05, from medical leave of absence to</p> <p>22 administrative termination"?</p> <p>23 A. Yes, sir.</p>	<p>1 terminated from employment at AFS?</p> <p>2 A. I was not clocking in at the clock, so I</p> <p>3 considered that not working.</p> <p>4 Q. Now, you were already not clocking in, from</p> <p>5 September through March, right?</p> <p>6 A. That's correct.</p> <p>7 Q. But you still considered yourself employed</p> <p>8 there?</p> <p>9 A. Yes.</p> <p>10 Q. So, at this time, you understood that you</p> <p>11 needed to do something prior to --</p> <p>12 MR. JACOBS: Object to the form of the</p> <p>13 question.</p> <p>14 MR. STARLING: Strike that then.</p> <p>15 Q. Did you understand that you had to take some</p> <p>16 steps prior to March the 14th of 2005?</p> <p>17 A. What steps are we talking about?</p> <p>18 Q. What did you understand you needed to do</p> <p>19 before March the 14th of 2005?</p> <p>20 A. Show back up to work with my return-to-work</p> <p>21 slip from my doctor, report in, sign in, fill out</p> <p>22 the paperwork to reclassify from aircraft mechanic</p> <p>23 to aircraft scheduler.</p>

21 (Pages 81 to 84)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 85	Page 87
<p>1 Q. You mentioned earlier that you asked if you 2 could be reinstated for one day as an aircraft 3 mechanic? 4 A. Yes, sir. That was what I was told that I 5 needed to do, by the HR personnel; yet the HR 6 personnel would not let me do that. 7 Q. But you understood that your restrictions 8 precluded you from being qualified for that 9 aircraft mechanic position though? 10 A. Right. 11 Q. But nevertheless you asked to be reinstated 12 to that position for one day? 13 A. Because that's what they said I needed to do 14 to be able to reclassify. 15 Q. Did you do anything in response to this 16 letter marked as Defendant's Exhibit No. 10? 17 A. Yes, sir. I gave it to my wife so she could 18 pay the bill. 19 Q. Take any other action in response to that? 20 A. Other than that? Yes, I needed to get my 21 return-to-work slip from my Dr. Manski. 22 Q. I'm going to hand you what I'm going to mark 23 as Defendant's Exhibit No. 12.</p>	<p>1 Q. Correct. 2 A. Back in December? I don't remember. 3 Q. Did you have any discussions with anyone 4 other than your doctors about performing a 5 different job back at AFS? 6 A. My wife. 7 Q. Other than your wife? 8 A. No. 9 Q. Okay. Did you agree with Dr. Kosmatka that 10 you needed to seek a position other than aircraft 11 mechanic? 12 A. Yes, sir. 13 Q. At this time, did you consider any other 14 position for which you might be qualified? 15 A. I don't remember. 16 Q. Let me show you what I'm going to mark as 17 Defendant's Exhibit 13. 18 (Defendant's Exhibit No. 13 was 19 marked for identification and a 20 copy of the same is attached 21 hereto.) 22 Q. Before we get there, can I go back to this 23 document that is marked Defendant's Exhibit 12?</p>
Page 86	Page 88
<p>1 (Defendant's Exhibit No. 12 was 2 marked for identification and a 3 copy of the same is attached 4 hereto.) 5 Q. Do you recognize the document I've marked as 6 Defendant's Exhibit 12? 7 A. Yes, sir. 8 Q. And was that a note from Dr. Kosmatka? 9 A. Yes, sir. 10 Q. And did you discuss with Dr. Kosmatka that 11 you probably needed to be in a position other than 12 aircraft mechanic? 13 A. Yes, sir. 14 Q. And is that what you understood his 15 recommendation to the company was, that you move 16 into something other than aircraft mechanic? 17 A. Yes, sir. 18 Q. Prior to going to AFS in March of 2005, did 19 you have any discussion with anyone there about 20 moving to another position? 21 A. Back in December? 22 Q. Correct. 23 A. With anybody from the HR office?</p>	<p>1 Did you give a copy of that to anyone at AFS? 2 A. Yes, sir. 3 Q. Who did you give that to? 4 A. One of the HR representatives. 5 Q. Do you recall when you did it? Was it 6 around the time of December 17th? 7 A. No, I don't remember. 8 Q. Do you recognize the document marked as 9 Defendant's Exhibit 13? 10 A. Yes, sir. 11 Q. And is this a letter from Dr. Manski to whom 12 it may concern? 13 A. Yes, sir. 14 Q. Is that something you asked Dr. Manski to 15 draft? 16 A. Yes, sir. 17 Q. Did you provide this letter, Defendant's 18 Exhibit 13, to anyone at AFS? 19 A. Yes, sir. 20 Q. Who did you provide that to? 21 A. One of the representatives at HR. 22 Q. Do you recall when you provided it to them? 23 A. No, I don't.</p>

22 (Pages 85 to 88)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 89	Page 91
<p>1 Q. Were you about to say something else?</p> <p>2 A. No.</p> <p>3 Q. You didn't take this in January though to</p> <p>4 AFS, did you?</p> <p>5 A. I don't remember.</p> <p>6 Q. Did you -- was -- Strike that.</p> <p>7 Was March the first time you went to</p> <p>8 Daleville to meet with the HR people?</p> <p>9 A. Yes, I believe so.</p> <p>10 Q. So can I assume that you wouldn't have</p> <p>11 delivered it to anybody at AFS prior to that time?</p> <p>12 A. I don't think so. I don't know.</p> <p>13 Q. You don't recall sending either Defendant's</p> <p>14 Exhibit 12 or 13 by mail to anyone at AFS, do you?</p> <p>15 A. I don't remember.</p> <p>16 Q. You mentioned earlier that you did provide</p> <p>17 it to someone in HR at AFS. Was that by hand?</p> <p>18 A. I believe I mailed it. I may have mailed</p> <p>19 it.</p> <p>20 Q. You may have mailed it?</p> <p>21 A. I mailed it.</p> <p>22 Q. You mailed it?</p> <p>23 A. I'm pretty sure I did.</p>	<p>1 hereto.)</p> <p>2 Q. Do you recognize the document marked as</p> <p>3 Defendant's Exhibit 14?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Is that a doctor's note from Dr. Manski that</p> <p>6 you received?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Is this the one that you provided to AFS on</p> <p>9 March the 14th?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And is this your understanding of some of</p> <p>12 your restrictions -- no lifting more than 25</p> <p>13 pounds, no climbing, no standing more than one and</p> <p>14 a half hours, no prolonged sitting more than one</p> <p>15 and a half hours, no bending at the waist to lift,</p> <p>16 pull, twist, or push to prevent reinjury to lower</p> <p>17 back? Is that what you understood your</p> <p>18 restrictions to be?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And it says, "These restrictions are</p> <p>21 permanent." Did you understand that as well?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, you submitted a prior note, you're</p>
Page 90	Page 92
<p>1 Q. You don't recall when though?</p> <p>2 A. No, I don't recall.</p> <p>3 Q. The second page of Defendant's Exhibit 13,</p> <p>4 Dr. Manski says: "I would recommend Mr. Houston</p> <p>5 not return to doing heavy mechanical aircraft work</p> <p>6 as he has had two disc herniations at L4-5</p> <p>7 requiring surgery and he would be at increased</p> <p>8 risk for recurrent disc herniations if he were to</p> <p>9 perform strenuous, heavy physical activities that</p> <p>10 might strain or injure his lower back."</p> <p>11 That's your recollection of what you had</p> <p>12 discussed with Dr. Manski?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And were you in agreement with that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. You agreed also that you should be retrained</p> <p>17 for a position that would be more sedentary?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Let me hand you what I'm going to mark as</p> <p>20 Defendant's Exhibit 14.</p> <p>21 (Defendant's Exhibit No. 14 was</p> <p>22 marked for identification and a</p> <p>23 copy of the same is attached</p>	<p>1 saying, that did not have a return-to-work date?</p> <p>2 A. Yes, sir.</p> <p>3 Q. But not this one that's been marked as</p> <p>4 Defendant's Exhibit 14?</p> <p>5 A. That's correct, sir.</p> <p>6 Q. What other -- what problems did you have,</p> <p>7 other than what's listed in the restrictions? You</p> <p>8 couldn't do heavy mechanical work, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. You could still walk?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And breathe?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Eat?</p> <p>15 A. Yes, sir.</p> <p>16 Q. See?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Hear?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Speak?</p> <p>21 A. Yes, sir.</p> <p>22 Q. So you could take care of yourself, in terms</p> <p>23 of bathing and getting dressed, those types of</p>

23 (Pages 89 to 92)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 93	Page 95
<p>1 things?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Did you have any mental problems at that</p> <p>4 point in time?</p> <p>5 A. No, sir.</p> <p>6 Q. At this point in time, you believed you</p> <p>7 could work as a scheduler?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Were there other jobs that you believe you</p> <p>10 could physically do at that point in time, other</p> <p>11 than a scheduler job?</p> <p>12 A. Other than sedentary-type work?</p> <p>13 MR. STARLING: Strike that. Let me</p> <p>14 start over.</p> <p>15 Q. You believe you could do any sedentary-type</p> <p>16 work for which you are qualified to do?</p> <p>17 A. Yes, sir.</p> <p>18 Q. You just couldn't do things that were</p> <p>19 prohibited by these restrictions?</p> <p>20 A. Correct.</p> <p>21 Q. And by "restrictions," I mean what's been</p> <p>22 outlined on Defendant's Exhibit 14.</p> <p>23 A. Yes, sir.</p>	<p>1 aircraft mechanic?</p> <p>2 Q. Right.</p> <p>3 A. At my former workplace? No. You need to be</p> <p>4 physically able to perform all the tasks that are</p> <p>5 restricted here.</p> <p>6 Q. You said, at your former workplace. Is</p> <p>7 there somewhere else you could have done it?</p> <p>8 A. Well, my former workplace being Cairns</p> <p>9 Field-ATTC. That's where I was employed at.</p> <p>10 Q. Which is at AFS?</p> <p>11 A. Yes, sir. I'm sorry for confusing you.</p> <p>12 Q. What's ATTC?</p> <p>13 A. Army -- I can't remember the acronym. It</p> <p>14 stands for testing.</p> <p>15 Q. That's a department of AFS?</p> <p>16 A. Correct.</p> <p>17 Q. And you listed Cairns Field?</p> <p>18 A. Yes, sir. That's the field that I was</p> <p>19 assigned to.</p> <p>20 Q. So were there other aircraft mechanic jobs</p> <p>21 you believe you could have done at other fields?</p> <p>22 A. Not with these restrictions.</p> <p>23 Q. What other fields are there, by the way?</p>
Page 94	Page 96
<p>1 Q. Those were really your only limitations at</p> <p>2 that point in time?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Were there any other jobs at AFS that you</p> <p>5 think you were qualified to do, including</p> <p>6 experience -- not just physically, but experience</p> <p>7 in other things -- other than the scheduler</p> <p>8 position?</p> <p>9 A. That were sedentary-type jobs?</p> <p>10 Q. Correct.</p> <p>11 A. Yeah, I could do that. If it was a</p> <p>12 sedentary-type job and I had the work skills and</p> <p>13 the knowledge, yes, I could perform the required</p> <p>14 job.</p> <p>15 Q. Are there any specific names of job</p> <p>16 classifications you can identify, other than</p> <p>17 scheduler?</p> <p>18 A. I don't remember any.</p> <p>19 Q. I'm assuming there's -- strike that.</p> <p>20 Based on these restrictions, there's no</p> <p>21 way -- is there any way you could have done the</p> <p>22 aircraft mechanic job?</p> <p>23 A. Based upon these restrictions being an</p>	<p>1 A. There's Hanchey, there's Lowe, Cairns.</p> <p>2 Q. These are all airfields at Fort Rucker,</p> <p>3 right?</p> <p>4 A. Yes, sir. I don't remember the rest of the</p> <p>5 airfields or the rest of the names of the</p> <p>6 airfields.</p> <p>7 Q. Let me hand you what has been marked</p> <p>8 Defendant's Exhibit 15.</p> <p>9 (Defendant's Exhibit No. 15 was</p> <p>10 marked for identification and a</p> <p>11 copy of the same is attached</p> <p>12 hereto.)</p> <p>13 Q. Do you recognize the document marked as</p> <p>14 Defendant's Exhibit 15?</p> <p>15 A. Yes, sir, I do.</p> <p>16 Q. This appears to be a return-to-work slip.</p> <p>17 Did you complete this?</p> <p>18 A. No, I did not.</p> <p>19 Q. Where do you recognize this from?</p> <p>20 A. When I returned on the 14th, they filled it</p> <p>21 out at the HR office.</p> <p>22 Q. You don't recall who was the one who filled</p> <p>23 it out?</p>

24 (Pages 93 to 96)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 97	Page 99
<p>1 A. No.</p> <p>2 Q. Now, you had been on Family Medical Leave</p> <p>3 Act leave for some time right? FMLA?</p> <p>4 A. I'm not familiar with the details of that,</p> <p>5 sir.</p> <p>6 Q. These names written in hand over here on the</p> <p>7 right, Don Donley, D-O-N-L-E-Y, who is he?</p> <p>8 A. He was the field manager, the overall field</p> <p>9 manager for Cairns Airfield.</p> <p>10 Q. What about Bill Parsons?</p> <p>11 A. Excuse me. I'll correct that. He is the</p> <p>12 field manager for the director of ATTC on Cairns.</p> <p>13 Q. Does that mean that he was somewhere up in</p> <p>14 the chain of command directly from you?</p> <p>15 A. Yes. I worked for him at ATTC.</p> <p>16 Q. With some levels of supervision in between?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Who was Bill Parsons?</p> <p>19 A. Bill Parsons would be the field manager at</p> <p>20 Lowe Airfield on Fort Rucker.</p> <p>21 Q. Larry Larkin?</p> <p>22 A. He would be the field manager for Cairns</p> <p>23 Airfield.</p>	<p>1 Q. Did you understand that to mean that he</p> <p>2 didn't think you could perform the aircraft</p> <p>3 mechanic functions with those restrictions?</p> <p>4 A. Yes, sir.</p> <p>5 MR. JACOBS: Are y'all about ready for</p> <p>6 a break?</p> <p>7 MR. STARLING: Yeah.</p> <p>8 (A lunch recess was taken.)</p> <p>9 (BY MR. STARLING)</p> <p>10 Q. Mr. Houston, we're back on the record after</p> <p>11 lunch.</p> <p>12 I want to go back to some of your testimony</p> <p>13 earlier about the March 14th meeting at AFS.</p> <p>14 A. Uh-huh, yes.</p> <p>15 Q. Was that the last time you went back and</p> <p>16 talked to anyone at AFS?</p> <p>17 A. Yes.</p> <p>18 Q. Did you have any other conversation with</p> <p>19 anybody from AFS after that, regarding your</p> <p>20 employment?</p> <p>21 A. Yes, I did.</p> <p>22 Q. Tell me about those conversations.</p> <p>23 A. I went and saw Mr. -- I'm trying to think of</p>
Page 98	Page 100
<p>1 Q. And Bob Chipman?</p> <p>2 A. At Knox Airfield.</p> <p>3 Q. Field manager there as well?</p> <p>4 A. Yes, sir.</p> <p>5 Q. So these four were the top four people at</p> <p>6 these four locations?</p> <p>7 A. Yes, sir. These are just four locations of</p> <p>8 the many airfields at Fort Rucker. There are</p> <p>9 other.</p> <p>10 Q. Now, when you met on the 14th, do you recall</p> <p>11 or were you involved in any phone conversations</p> <p>12 with any of these four people?</p> <p>13 A. I heard just the conversation with Mr.</p> <p>14 Donley.</p> <p>15 Q. And tell me about that conversation.</p> <p>16 A. The female lady at the HR called up Mr.</p> <p>17 Donley and explained over the phone about my</p> <p>18 return-to-work slip and the restrictions I have.</p> <p>19 Q. You're referring to Defendant's Exhibit 14?</p> <p>20 A. Yes, I am. And he stopped her short, before</p> <p>21 she could explain the rest of the details, and</p> <p>22 said that he couldn't use me. So she turned</p> <p>23 around and said, "He says he can't use you."</p>	<p>1 his name. I can see his face.</p> <p>2 Q. What type of position was he in? Was it</p> <p>3 someone at HR?</p> <p>4 A. It was an HR person. Robert --</p> <p>5 Q. Whitney?</p> <p>6 A. Whitney, yes. The reason I spoke to Mr.</p> <p>7 Whitney was because the VA had sent a letter about</p> <p>8 my employment status, and he answered the letter.</p> <p>9 And the reply that the VA sent me was that I was</p> <p>10 still employed with Army Fleet Support.</p> <p>11 Well, I went and took this letter, stating</p> <p>12 that I was still employed with Army Fleet Support,</p> <p>13 up to Mr. Whitney. And I explained to him, and I</p> <p>14 said, "This is wrong. I am not still employed,</p> <p>15 and I would like you to straighten out this</p> <p>16 problem with the VA because I'm looking to settle</p> <p>17 this claim with them."</p> <p>18 So I contacted the VA again, and they sent</p> <p>19 another letter. And he discussed or wrote down</p> <p>20 his answer that was telling them that I was not</p> <p>21 employed by Army Fleet Support.</p> <p>22 Q. He sent a letter to the VA?</p> <p>23 A. Uh-huh.</p>

25 (Pages 97 to 100)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 101	Page 103
<p>1 Q. Correct?</p> <p>2 A. The correct letter correcting my employment</p> <p>3 status with Army Fleet Support.</p> <p>4 Q. When was this that you had the conversation</p> <p>5 with Mr. Whitney?</p> <p>6 A. I don't remember, sir.</p> <p>7 Q. Okay. Months after March the 14th?</p> <p>8 A. Yes, months.</p> <p>9 Q. March the 14th was the last time you went to</p> <p>10 the HR office?</p> <p>11 A. Well, up until that one moment when I had to</p> <p>12 go back with the letters showing Mr. Whitney the</p> <p>13 problem.</p> <p>14 Q. At the March 14th meeting, you testified</p> <p>15 earlier, I believe, that you were refused a copy</p> <p>16 of the reclassification form?</p> <p>17 A. That's correct, sir.</p> <p>18 Q. And who is it that you said refused to give</p> <p>19 it to you?</p> <p>20 A. One of the HR representatives. One of the</p> <p>21 ladies there.</p> <p>22 Q. And then what is it you're saying that you</p> <p>23 were told about your employment status at that</p>	<p>1 description of -- you know, the purpose behind</p> <p>2 this paperwork out loud, and I said, "I'm being</p> <p>3 involuntarily terminated. That means I'm fired."</p> <p>4 And she goes, "No, you have recall rights." And I</p> <p>5 said, "Oh." And that was it.</p> <p>6 Q. Let me hand you what is marked as</p> <p>7 Defendant's Exhibit 16.</p> <p>8 (Defendant's Exhibit No. 16 was</p> <p>9 marked for identification and a</p> <p>10 copy of the same is attached</p> <p>11 hereto.)</p> <p>12 Q. Do you recognize the document marked as</p> <p>13 Defendant's Exhibit 16?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Is this a letter that you received?</p> <p>16 A. Yes.</p> <p>17 Q. In this letter, Ms. Whelan, it appears,</p> <p>18 explained your administrative termination status?</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand that you have not been</p> <p>21 fired from AFS as of today?</p> <p>22 A. Yes.</p> <p>23 Q. In fact, you could probably reapply for an</p>
Page 102	Page 104
<p>1 point in time?</p> <p>2 A. I was administratively terminated at the HR,</p> <p>3 and then went over to my work center to</p> <p>4 outprocess, and then I was told that I was</p> <p>5 involuntarily terminated and I was taking</p> <p>6 involuntary termination paperwork.</p> <p>7 Q. And did you complete the paperwork at that</p> <p>8 point in time?</p> <p>9 A. Uh-huh. I had to outprocess my workplace at</p> <p>10 ATTC.</p> <p>11 Q. Just because it wasn't on the record, was</p> <p>12 that a yes that you did complete some paperwork?</p> <p>13 A. What I did was an outprocessing checklist to</p> <p>14 fill out; and I filled out the checklist and</p> <p>15 brought it back to HR.</p> <p>16 Q. Did you complete any other paperwork at that</p> <p>17 point in time?</p> <p>18 A. No.</p> <p>19 Q. You testified earlier about being fired, I</p> <p>20 believe. Did anyone use the word "fire" in any</p> <p>21 conversations with you?</p> <p>22 A. When I was handed my involuntary termination</p> <p>23 paperwork at my work center, I read the</p>	<p>1 aircraft mechanic position today, if you were</p> <p>2 physically capable of doing that?</p> <p>3 A. Yes.</p> <p>4 Q. And just to be clear for the record, to date</p> <p>5 you have not reapplied for a position with AFS,</p> <p>6 correct?</p> <p>7 A. I have not; that's correct.</p> <p>8 Q. Did you ever talk with a union</p> <p>9 representative about your employment status?</p> <p>10 A. Could you rephrase the question?</p> <p>11 Q. Around the time that you were going through</p> <p>12 this process in March of 2005, did you ever talk</p> <p>13 with a union representative about your job status</p> <p>14 with AFS?</p> <p>15 A. Yes.</p> <p>16 Q. Who did you speak with?</p> <p>17 A. Mr. Blevins.</p> <p>18 Q. When did you talk with him?</p> <p>19 A. The 15th, I believe.</p> <p>20 Q. That was the day after the March 14th</p> <p>21 meeting?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Yes?</p>

26 (Pages 101 to 104)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 105	Page 107
<p>1 A. Yes.</p> <p>2 Q. And what did you discuss with Mr. Blevins?</p> <p>3 A. Mr. Blevins -- I said that I had been</p> <p>4 involuntarily terminated with AFS. And at that</p> <p>5 time, there was a contract negotiation going on.</p> <p>6 And Mr. Blevins and a few of his coworkers were in</p> <p>7 the office. And it was first thing in the</p> <p>8 morning. And they looked like they had spent the</p> <p>9 whole night being up during the negotiations.</p> <p>10 And I asked them, I said, Well, what do you</p> <p>11 guys want to do about this?" And they said,</p> <p>12 "Well, do you want to file a grievance?" And I</p> <p>13 said, "Not right now. I'll get back with you."</p> <p>14 Because they didn't look like they were very</p> <p>15 interested in talking to me. They had spent the</p> <p>16 whole night being up. They were drinking coffee</p> <p>17 and running on coffee and whatever. They looked</p> <p>18 pretty ragged.</p> <p>19 Q. Did you ever request that they file a</p> <p>20 grievance?</p> <p>21 A. No.</p> <p>22 Q. Did you speak with a union rep ever again</p> <p>23 after that?</p>	<p>1 Q. And did Mr. Tharpe file any claims on your</p> <p>2 behalf?</p> <p>3 A. No.</p> <p>4 Q. Other than that conversation you just</p> <p>5 mentioned with Mr. Blevins -- you've mentioned two</p> <p>6 -- did you have any other conversations with the</p> <p>7 union after that?</p> <p>8 A. No.</p> <p>9 Q. Did you have any conversations with any</p> <p>10 union representatives, prior to March the 15th,</p> <p>11 about your status?</p> <p>12 A. No.</p> <p>13 Q. Did you ever ask the union for a job</p> <p>14 reclassification form?</p> <p>15 A. No.</p> <p>16 Q. Are you familiar with the Collective</p> <p>17 Bargaining Agreement that was in place at this</p> <p>18 point in time?</p> <p>19 A. Yes.</p> <p>20 Q. Let me hand you what I'm going to mark as</p> <p>21 Defendant's Exhibit 17.</p> <p>22 (Defendant's Exhibit No. 17 was</p> <p>23 marked for identification and a</p>
Page 106	Page 108
<p>1 A. Yes, I did.</p> <p>2 Q. When was that?</p> <p>3 A. I spoke to Mr. Blevins again, and I was told</p> <p>4 by him that I was outside of the contract. And</p> <p>5 then he referred me to Mr. Wilmer Tharpe for legal</p> <p>6 advice.</p> <p>7 Q. What was outside the contract?</p> <p>8 A. I was outside the contract.</p> <p>9 Q. Did he explain why?</p> <p>10 A. No. He didn't say anything. He just said I</p> <p>11 was outside the contract, and he referred me to</p> <p>12 Mr. Wilmer Tharpe.</p> <p>13 Q. And did you go see Mr. Tharpe?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Mr. Tharpe, was ... (unintelligible) the</p> <p>16 union representative?</p> <p>17 A. He was the -- well, he still is the lawyer</p> <p>18 for the union.</p> <p>19 Q. And I don't want to know about your</p> <p>20 discussions with Mr. Tharpe in particular.</p> <p>21 Did you retain Mr. Tharpe as your attorney</p> <p>22 at that time?</p> <p>23 A. I retained him, yes.</p>	<p>1 copy of the same is attached</p> <p>2 hereto.)</p> <p>3 Q. Does that appear to be a true and correct</p> <p>4 copy of the Collective Bargaining Agreement</p> <p>5 between DynCorp and the union? Excuse me. Strike</p> <p>6 that.</p> <p>7 Between AFS and the union?</p> <p>8 A. It does say, "DynCorp Fort Rucker" here.</p> <p>9 Q. It appears to be missing the cover page.</p> <p>10 The agreement starts on page 1. We'll come back</p> <p>11 to that in just a minute.</p> <p>12 MR. JACOBS: I'm going to object to you</p> <p>13 asking him anything about that. That antedates</p> <p>14 the date of his termination.</p> <p>15 MR. STARLING: Right. The one that is</p> <p>16 marked Defendant's Exhibit 17 is the Collective</p> <p>17 Bargaining Agreement that was in effect at the</p> <p>18 time of this matter.</p> <p>19 Q. Does that appear to you to be a true and</p> <p>20 correct copy of the Collective Bargaining</p> <p>21 Agreement?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Do you understand, or did you understand</p>

27 (Pages 105 to 108)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 109	Page 111
<p>1 that to reclassify, you had to be active in your</p> <p>2 existing job classification?</p> <p>3 A. Could you rephrase the question, please?</p> <p>4 Q. Did you understand that, under the</p> <p>5 Collective Bargaining Agreement, to reclassify to</p> <p>6 another job position, you had to be actively</p> <p>7 employed in your current job position?</p> <p>8 A. Yes. That's what I was told by the HR</p> <p>9 representatives.</p> <p>10 Q. Let me hand you what has been marked as</p> <p>11 Defendant's Exhibit 18.</p> <p>12 (Defendant's Exhibit No. 18 was</p> <p>13 marked for identification and a</p> <p>14 copy of the same is attached</p> <p>15 hereto.)</p> <p>16 Q. Do you recognize the document marked as</p> <p>17 Defendant's Exhibit 18?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is that your signature in the middle of the</p> <p>20 first page?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Is this an FMLA application that you</p> <p>23 completed?</p>	<p>1 receiving a copy of it, no, I don't remember</p> <p>2 receiving a copy of it.</p> <p>3 Q. Do you know, do you understand, that under</p> <p>4 the Family Medical Leave Act, you're entitled to</p> <p>5 12 weeks of unpaid leave?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And did you understand that you received</p> <p>8 those 12 weeks of FMLA, starting on September</p> <p>9 10th?</p> <p>10 A. I don't remember, sir.</p> <p>11 Q. Prior to September of 2005, had you taken</p> <p>12 any other leaves of absence from AFS?</p> <p>13 A. September 2005?</p> <p>14 Q. I'm sorry. 2004. Prior to going out on</p> <p>15 your short-term disability and FMLA in 2004, had</p> <p>16 you taken any other leaves of absence from AFS?</p> <p>17 A. Yes, sir, I believe so.</p> <p>18 Q. What type were they?</p> <p>19 A. I pulled my rotator cuff, had surgery and</p> <p>20 had to fix it.</p> <p>21 Q. Was that an on-the-job injury?</p> <p>22 A. Uhm -- hmm.</p> <p>23 Q. Do you recall what type of leave you</p>
Page 110	Page 112
<p>1 A. Yes, sir.</p> <p>2 Q. Is that your handwriting on the top half of</p> <p>3 the first page?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And it appears that the second, third, and</p> <p>6 fourth pages were completed by Dr. Kosmatka. Do</p> <p>7 you see that?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Did you request that he complete that</p> <p>10 certification of healthcare provider?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And it appears that you applied for FMLA</p> <p>13 leave on September the 10th of 2004. Do you see</p> <p>14 that?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And do you recall being granted FMLA leave?</p> <p>17 A. I don't remember.</p> <p>18 Q. Do you recall receiving a copy of this</p> <p>19 document marked Defendant's Exhibit 18?</p> <p>20 A. Receiving a copy of this, sir?</p> <p>21 Q. Correct.</p> <p>22 A. I remember filling out this top part of the</p> <p>23 form and bringing it to the doctor; but as for</p>	<p>1 received?</p> <p>2 A. Short-term disability.</p> <p>3 Q. Do you recall how long you were out on</p> <p>4 short-term disability at that time?</p> <p>5 A. No, sir.</p> <p>6 Q. Was it the full six months?</p> <p>7 A. I don't remember.</p> <p>8 Q. Were you reinstated to your aircraft</p> <p>9 mechanic job after that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. The Collective Bargaining Agreement we</p> <p>12 referenced earlier, do you understand that</p> <p>13 governed your employment at AFS?</p> <p>14 A. Yes.</p> <p>15 Q. Let me show you what I'm going to mark as</p> <p>16 Defendant's Exhibit 19.</p> <p>17 (Defendant's Exhibit No. 19 was</p> <p>18 marked for identification and a</p> <p>19 copy of the same is attached</p> <p>20 hereto.)</p> <p>21 Q. Do you recognize that document marked as</p> <p>22 Defendant's Exhibit 19?</p> <p>23 A. Yes, sir.</p>

28 (Pages 109 to 112)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 113	Page 115
<p>1 Q. And is that an e-mail that you sent to Bob 2 Whitney? 3 A. Yes, sir. 4 Q. Is that still your e-mail address, 5 Jollymon@cox.net? 6 A. Yes, sir. 7 Q. Okay. And earlier you discussed 8 conversation you had with Bob Whitney about 9 application for VA benefits, correct? 10 A. Yes, sir. 11 Q. And is this e-mail addressing that 12 discussion you had? 13 A. Wait a minute. Let me read it. 14 (The witness examines the 15 document.) 16 A. Yes. 17 Q. And you testified earlier that Mr. Whitney 18 subsequently submitted a letter. And I take it, 19 from that, that you were able to qualify for VA 20 benefits after that? 21 A. Yes, sir. 22 Q. Let me hand you what I'm marking as 23 Defendant's Exhibit 20.</p>	<p>1 Defendant's Exhibit 21? 2 A. Yes, sir. 3 Q. Is that your signature on the bottom left? 4 A. Yes, sir. 5 Q. And is Brigitte M. Houston your wife? 6 A. Yes, sir. 7 Q. And is this a form for all the insurance and 8 other benefits you were continuing to receive at 9 AFS? 10 A. That I was paying for, yes, sir. 11 Q. And it looks like it's dated March the 15th 12 of '05. 13 When you said you went and completed a form 14 on March the 15th, is this the form you completed? 15 A. That was one of the forms. There was an 16 outprocessing form and this 17 paying-for-the-benefits form. 18 Q. So there's some type of outprocessing form 19 that you also completed? 20 A. Yes, sir. 21 Q. I'm handing you what I'll mark as 22 Defendant's Exhibit 22. 23 (Defendant's Exhibit No. 22 was</p>
Page 114	Page 116
<p>1 (Defendant's Exhibit No. 20 was 2 marked for identification and a 3 copy of the same is attached 4 hereto.) 5 Q. Do you recognize that document? 6 A. Yes, sir. 7 Q. Is Exhibit 20 a fax that you sent to AFS? 8 A. Yes, sir. 9 Q. And what was the purpose of this fax? 10 A. To update my daughter on the dental plan. 11 Q. Okay. And did they update your daughter on 12 the dental plan? 13 A. Yes, sir. 14 Q. Okay. You continued to receive benefits 15 from AFS even after March 14th, correct? 16 A. Yes, sir. 17 (Defendant's Exhibit No. 21 was 18 marked for identification and a 19 copy of the same is attached 20 hereto.) 21 Q. Let me show you what I've marked as 22 Defendant's Exhibit 21. 23 Do you recognize the document I've marked as</p>	<p>1 marked for identification and a 2 copy of the same is attached 3 hereto.) 4 Q. Do you recognize the document marked as 5 Defendant's Exhibit 22? 6 A. Yes, sir. 7 Q. And what is that? 8 A. Verification of my daughter's enrollment in 9 school full time. 10 Q. Did AFS have some type of tuition 11 reimbursement plan or something of that nature? 12 A. Not that I know of. I don't know. 13 Q. Or was this for benefits purposes? 14 A. This was for benefits purposes, for a dental 15 plan. 16 Q. And it looks like – 17 (Defendant's Exhibit No. 23 was 18 marked for identification and a 19 copy of the same is attached 20 hereto.) 21 Q. I'm handing you Defendant's Exhibit 23. 22 That appears to be the same issue, which is your 23 daughter being registered a full-time student for</p>

29 (Pages 113 to 116)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 117	Page 119
<p>1 purposes of getting benefits for her?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And is that a true and correct copy of what</p> <p>4 appears to be a letter from Okaloosa-Walton</p> <p>5 Community College?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Now, after you were no longer actively</p> <p>8 working at AFS in March of 2005, did you apply for</p> <p>9 unemployment compensation?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And as I understand it, initially the</p> <p>12 unemployment agency ruled favorably to you, and</p> <p>13 then it was appealed; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And ultimately you were denied unemployment?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you understand the reason that you were</p> <p>18 denied unemployment?</p> <p>19 A. The reason? Could you rephrase the</p> <p>20 question, please?</p> <p>21 Q. What was the reason provided by the State of</p> <p>22 Alabama as to why you were ultimately denied</p> <p>23 unemployment compensation?</p>	<p>1 A. Do you mean the hearing? Yes, sir.</p> <p>2 Q. It was a hearing where you were sworn under</p> <p>3 oath and you gave testimony, as well as others?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And did you testify truthfully at that</p> <p>6 hearing?</p> <p>7 A. Yes, sir.</p> <p>8 (Defendant's Exhibit No. 25 was</p> <p>9 marked for identification and a</p> <p>10 copy of the same is attached</p> <p>11 hereto.)</p> <p>12 Q. Let me hand you what I've marked as</p> <p>13 Defendant's Exhibit 25. I will advise you that</p> <p>14 that is a copy of the transcript from the</p> <p>15 unemployment hearing that we received from the</p> <p>16 State of Alabama.</p> <p>17 Have you seen that document before?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. Does that appear to be a true and</p> <p>20 correct copy of the transcript from the</p> <p>21 unemployment hearing?</p> <p>22 A. It appears to be, yes, sir.</p> <p>23 Q. Look at page 9, if you would, Mr. Houston.</p>
Page 118	Page 120
<p>1 A. I do not remember.</p> <p>2 (Defendant's Exhibit No. 24 was</p> <p>3 marked for identification and a</p> <p>4 copy of the same is attached</p> <p>5 hereto.)</p> <p>6 Q. What I'm handing you is marked as</p> <p>7 Defendant's Exhibit No. 24.</p> <p>8 Do you recognize that document?</p> <p>9 A. Yes, sir, I do.</p> <p>10 Q. Is that the Decision of the Board of Appeals</p> <p>11 for the Department of Industrial Relations on your</p> <p>12 unemployment claim?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Do you see on the second page where it says,</p> <p>15 under "Decision," second sentence, "The claimant</p> <p>16 has failed to comply with the terms of the Labor</p> <p>17 Agreement. He is disqualified under the</p> <p>18 provisions of Section 25-4-77(a)(3) of the Law</p> <p>19 effective March 13, 2005."</p> <p>20 A. Yes, sir.</p> <p>21 Q. Now, you attended an unemployment</p> <p>22 compensation hearing as part of that unemployment</p> <p>23 process, correct?</p>	<p>1 A. Yes.</p> <p>2 Q. About halfway down, next to your name, it</p> <p>3 says, "I was there on the morning and I asked very</p> <p>4 politely to the HR representative if I could go</p> <p>5 into my old career field for one day so I may be</p> <p>6 allowed to reclassify, but they would not allow me</p> <p>7 to go into my old career field due to my physical</p> <p>8 limitations."</p> <p>9 Is that a true statement as to your</p> <p>10 recollection of what happened?</p> <p>11 A. Yes. But you failed to read the last</p> <p>12 sentence.</p> <p>13 Q. "They refused to accommodate those</p> <p>14 limitations"?</p> <p>15 A. That is correct.</p> <p>16 Q. So is that a true recollection of what</p> <p>17 happened that day?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And is that referencing your meeting on</p> <p>20 March the 14th of 2005?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Did you ever receive any training from AFS</p> <p>23 on discrimination or harassment policies?</p>

30 (Pages 117 to 120)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 121	Page 123
<p>1 A. Are you talking about, like, equal 2 treatment? 3 Q. Equal employment. 4 A. Equal employment? 5 Q. Yes. 6 A. Yes, sir, I believe there was. In the 7 introduction week, we had it at Knox Field. 8 Q. Do you recall the nature of that type of 9 training? 10 A. The nature? 11 Q. What the training was about. 12 A. What the training was about? At Knox Field, 13 it was just an introduction training session into 14 what to expect working for DynCorp. 15 Q. Did you receive any additional training when 16 AFS took over the contract? 17 A. Not that I remember. 18 Q. Did you receive a copy of the Collective 19 Bargaining Agreement when you first came on with 20 DynCorp? 21 A. Yes. 22 Q. And was the same agreement utilized after 23 AFS took over the contract?</p>	<p>1 Q. You mean you considered yourself disabled? 2 A. Yes. 3 Q. What accommodation did you believe that AFS 4 owed you? 5 A. Could you rephrase the question, please? 6 Q. You testified that you filed suit because 7 you believe that AFS was obligated to make 8 reasonable accommodations to you, correct? 9 A. That is correct. 10 Q. And my question is: What accommodations do 11 you believe AFS was obligated to provide to you? 12 A. Reasonable accommodations to fit my 13 disabilities. 14 Q. And can you tell me what those reasonable 15 accommodations are, or what those reasonable 16 accommodations should have been as of March of 17 2005? 18 MR. JACOBS: I'm going to object to the 19 form of that, of what they should have been. 20 MR. STARLING: Well, he's alleged them. 21 Q. Okay. What are the reasonable 22 accommodations you believe that AFS was obligated 23 to provide you but did not?</p>
Page 122	Page 124
<p>1 A. There was negotiations for redoing the 2 contract, if that's what you're talking about, 3 with the CBA. Yes, there was a different CBA. 4 Q. Did you receive whatever additional -- 5 A. Yes. 6 Q. You did? 7 A. Yes. 8 Q. When did you decide to sue AFS in this case 9 that we are here for today? 10 A. Sometime after April. 11 Q. April of 2005? 12 A. Yes. 13 Q. Why after April of 2005? 14 A. I believed that I was discriminated against. 15 Q. In what way do you believe you were 16 discriminated against? 17 A. Under the guidelines of the Americans with 18 Disabilities Act. 19 Q. And what are the guidelines that you are 20 referring to? 21 A. The employer has to make a reasonable 22 accommodation to the employee who has a 23 disability.</p>	<p>1 MR. JACOBS: I'll object again. Answer 2 if you can. But I just object to the question. 3 It's their obligation to accommodate; it's not his 4 to decide what they are. 5 A. I'm still trying to figure out the question 6 again. Could you say it again? 7 Q. You have testified that you filed this 8 lawsuit because you believe that AFS did not make 9 reasonable accommodations to you, under the 10 Americans With Disabilities Act, correct? 11 A. That is correct. 12 Q. My question was: When you say they did not 13 make reasonable accommodations, what reasonable 14 accommodations are you referring to? 15 A. To accommodate my permanent restrictions 16 that Dr. Manski levied upon me in my 17 return-to-work slip. 18 Q. What are you alleging they should have done? 19 A. Provided me a chance to have a 20 sedentary-type job where I could have used my work 21 skills and my work experience for the company. 22 Q. You're not aware of any position, other than 23 the aircraft scheduler position, that you believe</p>

31 (Pages 121 to 124)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 125	Page 127
<p>1 you are qualified to perform, are you?</p> <p>2 A. There was no other -- to my knowledge, there</p> <p>3 was no other jobs that I knew that I was able that</p> <p>4 I could do at the time.</p> <p>5 Q. And how do you believe that they should have</p> <p>6 accommodated you to allow you to perform the</p> <p>7 aircraft scheduler position?</p> <p>8 A. Can you say that again, please?</p> <p>9 Q. Let's try it this way: What do you think</p> <p>10 they didn't do that they should have done?</p> <p>11 A. I don't believe they should have terminated</p> <p>12 my employment.</p> <p>13 Q. And by that you mean you believe you were</p> <p>14 terminated on March the 14th, 2005?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Any other accommodation you believe that</p> <p>17 they should have made for you?</p> <p>18 A. A reasonable accommodation to find me a job</p> <p>19 I was -- I had the ability and qualifications to</p> <p>20 do.</p> <p>21 Q. Now, you don't think they could have or</p> <p>22 should have violated the Collective Bargaining</p> <p>23 Agreement to do that, do you?</p>	<p>1 A. This is true.</p> <p>2 Q. So is your claim that AFS simply should have</p> <p>3 put you in another position, namely an aircraft</p> <p>4 scheduler, upon your request?</p> <p>5 A. Upon my -- upon me filling out a</p> <p>6 reclassification form and getting it approved and</p> <p>7 going through the channels that were the</p> <p>8 procedures, yes.</p> <p>9 Q. And being qualified for that position?</p> <p>10 A. And being qualified for that position, or</p> <p>11 any other position that I was qualified to do.</p> <p>12 Q. For example, having a record of being able</p> <p>13 to type 30 words per minute?</p> <p>14 MR. JACOBS: Object to the form of the</p> <p>15 question.</p> <p>16 Q. Being able to type 30 words per minute was a</p> <p>17 requirement for the aircraft scheduler position,</p> <p>18 right?</p> <p>19 A. That's correct, yes.</p> <p>20 Q. And you had to have a record on file of</p> <p>21 being able to do that to be qualified for that</p> <p>22 position?</p> <p>23 MR. JACOBS: Object to the form of the</p>
Page 126	Page 128
<p>1 A. Could you please explain what you mean by</p> <p>2 having they violate the Collective Bargaining</p> <p>3 Agreement? I'm not following what you mean.</p> <p>4 Are you saying that they are supposed to</p> <p>5 violate the CBA to accommodate me? Is that what</p> <p>6 you're saying?</p> <p>7 Q. Right. Is that what you are suggesting?</p> <p>8 A. Well, how would they be violating the CBA if</p> <p>9 they were complying with the federal law.</p> <p>10 Q. You agree the Collective Bargaining</p> <p>11 Agreement is the agreement that governs the terms</p> <p>12 and conditions for employees at AFS that are</p> <p>13 covered by that bargaining agreement, right?</p> <p>14 A. Yes.</p> <p>15 Q. And there are provisions in that Collective</p> <p>16 Bargaining Agreement addressing job</p> <p>17 reclassification, seniority bidding rights, et</p> <p>18 cetera, correct?</p> <p>19 A. This is correct.</p> <p>20 Q. And those terms in that Collective</p> <p>21 Bargaining Agreement govern how AFS must address</p> <p>22 employees who seek to reclassify, bid, et cetera,</p> <p>23 right?</p>	<p>1 question.</p> <p>2 Q. Do you understand that to be the case?</p> <p>3 A. Yes.</p> <p>4 Q. You had to have documentation that you</p> <p>5 qualified to meet the prerequisites of the</p> <p>6 aircraft scheduler, correct?</p> <p>7 A. This is right.</p> <p>8 Q. Is there any reason that you believe</p> <p>9 JobsPlus would not have a record of you ever being</p> <p>10 there or applying there?</p> <p>11 A. Could you say that again, please?</p> <p>12 Q. If JobsPlus has no record of you having</p> <p>13 submitted an application there or doing anything</p> <p>14 there, would you have any explanation for that?</p> <p>15 A. No. You would have to contact JobsPlus.</p> <p>16 Q. Now, did you seek help from the EEO office</p> <p>17 at Eglin Air Force Base?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Why did you decide to go there?</p> <p>20 A. Why did I decide to go there? My Air Force</p> <p>21 training told me that I had been terminated</p> <p>22 without cause, and I wanted to see if there was</p> <p>23 any kind of avenues I could follow or get some</p>

32 (Pages 125 to 128)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 129	Page 131
<p>1 advice from the EEOC office on Eglin to pursue</p> <p>2 this matter that I was -- the hand I was dealt by</p> <p>3 AFS.</p> <p>4 Q. Did you go down to Eglin and fill out a</p> <p>5 form?</p> <p>6 A. Yes, I did.</p> <p>7 Q. And what did you tell the person at Eglin</p> <p>8 that you spoke with about your claim?</p> <p>9 A. I was involuntarily terminated.</p> <p>10 Q. Did you also complain to the Department of</p> <p>11 Labor?</p> <p>12 A. Yes. I wrote a letter to them too.</p> <p>13 Q. And did you fill out a form there also?</p> <p>14 A. Which Department of Labor are we talking</p> <p>15 about?</p> <p>16 Q. Who all did you go to?</p> <p>17 A. Do you want all the names of the Department</p> <p>18 of Labor offices I've wrote to?</p> <p>19 Q. Yeah.</p> <p>20 A. I'll have to go out to my truck and get a</p> <p>21 spreadsheet.</p> <p>22 Q. Let's try as many as we can do here. OFCCP?</p> <p>23 A. OFCCP was one, yes.</p>	<p>1 Q. Any other requests for accommodation that</p> <p>2 you made?</p> <p>3 A. As to the reclassification form?</p> <p>4 Q. Or any other type of request for</p> <p>5 accommodation?</p> <p>6 A. I don't believe so, no.</p> <p>7 Q. Are you aware of anyone else who has been</p> <p>8 accommodated under similar circumstances as you?</p> <p>9 A. No.</p> <p>10 Q. Let me hand you what I'm going to mark as</p> <p>11 Exhibit 26.</p> <p>12 (Defendant's Exhibit No. 26 was</p> <p>13 marked for identification and a</p> <p>14 copy of the same is attached</p> <p>15 hereto.)</p> <p>16 Q. Do you recognize the document I've marked as</p> <p>17 Defendant's Exhibit 26?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is that a status change request form from</p> <p>20 AFS?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Is this the form that you complete to</p> <p>23 request reclassification?</p>
Page 130	Page 132
<p>1 Q. Who else do you recall complaining to?</p> <p>2 A. Numerous agencies.</p> <p>3 Q. Was your complaint of the same nature at</p> <p>4 each agency that you complained to?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Same claim about being involuntarily</p> <p>7 terminated?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Did you make any claims about lack of</p> <p>10 reasonable accommodation?</p> <p>11 A. I just said that I was involuntarily</p> <p>12 terminated.</p> <p>13 Q. When did you request an accommodation from</p> <p>14 AFS?</p> <p>15 A. On the 14th.</p> <p>16 Q. March the 14th, 2005?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And how did you make that request?</p> <p>19 A. I asked them. I asked one of the lady</p> <p>20 representatives at HR if I could have a</p> <p>21 reclassification form, right then and there, to</p> <p>22 fill out; and I was denied the appropriate</p> <p>23 reclassification form to fill out.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. You've seen this before?</p> <p>3 A. As for shift preferences, yes.</p> <p>4 Q. Have you filled it out for shift preferences</p> <p>5 before?</p> <p>6 A. Yes, sir.</p> <p>7 Q. When did you do that?</p> <p>8 A. I do not remember, sir. Early in my</p> <p>9 employment with DynCorp.</p> <p>10 Q. Where did you get the form that time when</p> <p>11 you did that?</p> <p>12 A. I don't remember.</p> <p>13 Q. I'm going to hand you what I'm going to mark</p> <p>14 as Defendant's Exhibit 27.</p> <p>15 (Defendant's Exhibit No. 27 was</p> <p>16 marked for identification and a</p> <p>17 copy of the same is attached</p> <p>18 hereto.)</p> <p>19 Q. Do you recognize the document I've marked as</p> <p>20 Defendant's Exhibit 27?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Is that the Complaint in this lawsuit?</p> <p>23 A. Yes, sir.</p>

33 (Pages 129 to 132)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

	Page 133	Page 135
<p>1 Q. And as for the factual allegations in here,</p> <p>2 are they true and correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. In paragraph 18, you allege that Fleet</p> <p>5 Services unlawfully retaliated against you for</p> <p>6 pursuing rights under the ADA following your</p> <p>7 termination from employment by interference with</p> <p>8 your right to qualify for and receive benefits</p> <p>9 earned and due you.</p> <p>10 What benefits are you talking about in that</p> <p>11 paragraph?</p> <p>12 MR. STARLING: Let's go off the record</p> <p>13 for just a minute.</p> <p>14 (An off-the-record discussion</p> <p>15 was held.)</p> <p>16 A. Receive benefits earned and due to me, I</p> <p>17 would think these benefits would be the</p> <p>18 unemployment compensation benefits.</p> <p>19 Q. Any other benefits?</p> <p>20 A. No.</p> <p>21 Q. AFS has been helpful in your request for VA</p> <p>22 benefits, right?</p> <p>23 A. On my second request, yes, they were, when I</p>		<p>1 A. I left that up to my attorney.</p> <p>2 Q. So you don't know then?</p> <p>3 A. I just know what the meaning of the</p> <p>4 abbreviation is. As for the details, no, sir, I</p> <p>5 don't know the details.</p> <p>6 Q. You are not claiming that you should be</p> <p>7 entitled to an additional 12 weeks off of work, or</p> <p>8 paid, or anything like that, are you?</p> <p>9 A. (No response.)</p> <p>10 Q. Paragraph 29 says, "Fleet Services</p> <p>11 retaliated against Houston following his efforts</p> <p>12 for redress of its discrimination against him by</p> <p>13 interference with his right to qualify for and</p> <p>14 receive benefits earned and due him."</p> <p>15 Again, is that relating to your unemployment</p> <p>16 compensation benefits?</p> <p>17 A. That would be one, yes, sir.</p> <p>18 Q. Any other benefits that you're claiming were</p> <p>19 denied in retaliation for you making a claim?</p> <p>20 A. This document was drawn up by my attorney,</p> <p>21 and I believe that you would have to refer to him</p> <p>22 on those said benefits.</p> <p>23 Q. Let's try it this way: Other than</p>
	Page 134	Page 136
<p>1 showed them that they made a mistake.</p> <p>2 MR. STARLING: Why don't we take a</p> <p>3 break here?</p> <p>4 (A brief recess was taken.)</p> <p>5 MR. STARLING: We're back on the</p> <p>6 record. We're continuing to look at Exhibit No.</p> <p>7 27, the Complaint in this matter.</p> <p>8 Q. If you'll go to paragraph 24 -- actually,</p> <p>9 look down to paragraph 25, if you would, "Houston</p> <p>10 was not given notice in writing before the leave</p> <p>11 began that his paid time off leave and short-term</p> <p>12 disability would be counted towards his maximum 12</p> <p>13 weeks of leave allowed under the FMLA."</p> <p>14 Did you not receive any notice, you're</p> <p>15 claiming, that FMLA would be counted during the</p> <p>16 time of your short-term disability?</p> <p>17 A. I don't remember.</p> <p>18 Q. Do you understand what your FMLA claim is in</p> <p>19 this case?</p> <p>20 A. No.</p> <p>21 Q. Do you -- Strike that.</p> <p>22 You don't have any idea what violation of</p> <p>23 the FMLA you are claiming in this lawsuit?</p>		<p>1 unemployment benefits, what other benefits have</p> <p>2 you been denied?</p> <p>3 A. Other than my unemployment benefits, I don't</p> <p>4 recall any.</p> <p>5 (Defendant's Exhibit No. 28 was</p> <p>6 marked for identification and a</p> <p>7 copy of the same is attached</p> <p>8 hereto.)</p> <p>9 Q. I'm handing you what's been marked as</p> <p>10 Defendant's Exhibit No. 28.</p> <p>11 MR. STARLING: Let's go off the record.</p> <p>12 (An off-the-record discussion</p> <p>13 was held.)</p> <p>14 (BY MR. STARLING)</p> <p>15 Q. We'll come back to 28 in just a minute. You</p> <p>16 referenced earlier a spreadsheet. I'm sorry.</p> <p>17 Here we go.</p> <p>18 I've handed you what's been marked as</p> <p>19 Defendant's Exhibit No. 28. Can you tell me what</p> <p>20 this is?</p> <p>21 A. My spreadsheet.</p> <p>22 Q. Earlier you referenced a spreadsheet that</p> <p>23 you said was in your vehicle outside, correct?</p>

34 (Pages 133 to 136)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 137	Page 139
<p>1 A. And this is it. This is a copy of it.</p> <p>2 Q. And you discussed that, in that spreadsheet,</p> <p>3 you had listed all of the various organizations to</p> <p>4 which you had complained about your treatment by</p> <p>5 AFS. Is that what this is?</p> <p>6 A. This is a spreadsheet that tracked the</p> <p>7 number of packages I sent out to various</p> <p>8 organizations in this country, yes, sir, to</p> <p>9 complain about my treatment.</p> <p>10 Q. And did all of those organizations deny your</p> <p>11 request?</p> <p>12 A. No, sir. Some of them answered me and some</p> <p>13 of them didn't. I should say they responded and</p> <p>14 some of them did not respond.</p> <p>15 Q. Did any of them take action on your behalf?</p> <p>16 A. Yes.</p> <p>17 Q. Which ones were those?</p> <p>18 A. Equality Opportunity and Treatment</p> <p>19 Commission of Birmingham, Alabama; the National</p> <p>20 Labor Relations Board; the Staff Judge Advocate or</p> <p>21 the Army -- oh, here we go.</p> <p>22 Q. And just for the record, you're looking at</p> <p>23 the second page of the spreadsheet, which has what</p>	<p>1 back pay.</p> <p>2 How much back pay do you believe you are</p> <p>3 entitled to?</p> <p>4 A. I would reference that answer to my lawyer.</p> <p>5 He knows the specifics on that.</p> <p>6 Q. Let's put it in simple terms here. If you</p> <p>7 had received the aircraft scheduler position on</p> <p>8 March the 14th --</p> <p>9 A. Yes.</p> <p>10 Q. -- do you know what your rate of pay would</p> <p>11 have been for that position?</p> <p>12 A. I know it would not be as high as an</p> <p>13 aircraft mechanic's. That's all I know. I know</p> <p>14 it would be somewhat less, but still a living</p> <p>15 wage.</p> <p>16 Q. And you are claiming that if the company had</p> <p>17 accommodated you in some way, you would have had</p> <p>18 that aircraft scheduler position, up until</p> <p>19 December 2005, when you became eligible for the VA</p> <p>20 benefits?</p> <p>21 A. I would still be working there if I was</p> <p>22 allowed to have the aircraft scheduler job.</p> <p>23 Q. Today you would?</p>
Page 138	Page 140
<p>1 action was taken on it, it appears to be?</p> <p>2 A. Yes.</p> <p>3 Q. And does that correctly identify or explain</p> <p>4 what action was taken?</p> <p>5 A. It does identify certain letters that I had</p> <p>6 a response by organizations that I sent a package</p> <p>7 to. And some organizations failed to respond</p> <p>8 whatsoever.</p> <p>9 Q. And that's set forth in column E of the</p> <p>10 spreadsheet?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Column A is the organization, correct?</p> <p>13 A. The name, yes, and the organization.</p> <p>14 Q. What is column B?</p> <p>15 A. The date.</p> <p>16 Q. That you originally --</p> <p>17 A. Sent the package off.</p> <p>18 Q. And what is column C?</p> <p>19 A. The date that I received a response.</p> <p>20 Q. Okay. And then column F?</p> <p>21 A. Is a mistake.</p> <p>22 Q. Okay. In your Complaint, you seek various</p> <p>23 forms of damages in this lawsuit. For example,</p>	<p>1 A. Yes.</p> <p>2 Q. I thought you testified earlier that you</p> <p>3 were completely disabled, as of --</p> <p>4 A. Yes, I am disabled. But because of the</p> <p>5 incident that I was thrown into, I applied through</p> <p>6 the VA for disability and I was granted, for I saw</p> <p>7 no job offer coming from Army Fleet Support at the</p> <p>8 time.</p> <p>9 And I said, Well, I've got to have an income</p> <p>10 coming into my family, so I'll go to the VA and</p> <p>11 see what they can do for me.</p> <p>12 Q. Now, as part of your application to the VA,</p> <p>13 haven't you told them that you were unable to</p> <p>14 perform any job?</p> <p>15 A. That was up to the VA's determination; that</p> <p>16 wasn't up to me. I just handed them the medical</p> <p>17 evidence.</p> <p>18 Q. So as we sit here today, you think that you</p> <p>19 are physically capable of performing an aircraft</p> <p>20 scheduler position?</p> <p>21 A. If I was not already rated 100 percent</p> <p>22 permanent and total by the VA, I would be able and</p> <p>23 qualified to perform the job as an aircraft</p>

35 (Pages 137 to 140)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 141	Page 143
<p>1 scheduler, yes, sir.</p> <p>2 Q. Was that a yes or a no?</p> <p>3 A. Yes.</p> <p>4 Q. You would be able to perform your job?</p> <p>5 Strike that.</p> <p>6 As we sit here today, you are perfectly</p> <p>7 capable of performing an aircraft scheduler</p> <p>8 position?</p> <p>9 A. If I was given the job as an aircraft</p> <p>10 scheduler, and the accommodations were made that</p> <p>11 could get up and move around every hour and a half</p> <p>12 as needed for my back, yes, I don't see why I</p> <p>13 could not be an aircraft scheduler.</p> <p>14 Q. And you also applied for Social Security</p> <p>15 Disability, right?</p> <p>16 A. Yeah. Because the VA rated me as 100</p> <p>17 percent total and permanent.</p> <p>18 Q. And as we discussed earlier, you have not</p> <p>19 received the determination from Social Security?</p> <p>20 A. That is still up in the air.</p> <p>21 Q. In your submission to Social Security for</p> <p>22 those disability benefits, did you tell them that</p> <p>23 you were unable to perform any and all jobs?</p>	<p>1 get some judicial satisfaction.</p> <p>2 Q. You don't want your job? You don't want the</p> <p>3 aircraft scheduler position now, do you?</p> <p>4 A. No. Because I'm totally out of the</p> <p>5 workforce now.</p> <p>6 Q. And you are content with that?</p> <p>7 A. Yes, I am.</p> <p>8 Q. So you just want money and the satisfaction,</p> <p>9 is that it?</p> <p>10 A. I would rather have the personal</p> <p>11 satisfaction that I righted a wrong. And as for</p> <p>12 the money, it would be nice, but it's not the main</p> <p>13 reason why I'm going ahead and doing this. I'm</p> <p>14 not going through this for the money; I'm going</p> <p>15 through it because I was wronged and I want</p> <p>16 something righted.</p> <p>17 Q. Well, are you looking for some type of</p> <p>18 apology from AFS?</p> <p>19 A. I would like them to abide by the federal</p> <p>20 laws; you know, to do the right thing with people.</p> <p>21 I'm looking not for myself, but somebody else down</p> <p>22 the line that would hopefully never fall into the</p> <p>23 same situation that I fell into; that, you know,</p>
Page 142	Page 144
<p>1 A. That's to be handled by my attorney down in</p> <p>2 Tampa.</p> <p>3 Q. Did you sign a form?</p> <p>4 A. I signed a lot of forms with Bender &</p> <p>5 Bender.</p> <p>6 Q. What do you recall the forms stating about</p> <p>7 your capability of performing jobs?</p> <p>8 A. I don't remember.</p> <p>9 Q. What do you want out of this lawsuit?</p> <p>10 A. There is a principle, an ethical question</p> <p>11 here that I want resolved.</p> <p>12 When I was wronged, you know, when I was</p> <p>13 refused to be allowed to reclassify, I want that</p> <p>14 issue brought to justice for ethical reasons and</p> <p>15 for my own personal integrity.</p> <p>16 There was a question that was brought up</p> <p>17 whether I -- let me rephrase that -- that I was</p> <p>18 not allowed to continue my work with this company.</p> <p>19 I was wondering why that the HR people took an</p> <p>20 attitude or made a -- not an attitude, but a</p> <p>21 decision -- that would violate the Americans With</p> <p>22 Disabilities Act, when it was as blatant as this.</p> <p>23 They -- you know, I was shocked. I just wanted to</p>	<p>1 that would not happen to them.</p> <p>2 Q. Is there anyone in particular at AFS that</p> <p>3 you are mad at or you think was --</p> <p>4 A. No. I'm not mad at anybody at AFS.</p> <p>5 Q. Just the system itself was --</p> <p>6 A. It was flawed. It was a mistake in</p> <p>7 somebody's judgment or a procedural mistake or an</p> <p>8 oversight, or whatever you want to call it. There</p> <p>9 was something wrong, and it happened to me, and</p> <p>10 I'd like to get that straightened out.</p> <p>11 Q. Because my sense is, even after March, I</p> <p>12 mean, when you went back to an e-mail back to Bob</p> <p>13 Whitney, I mean, he was trying to help you, at the</p> <p>14 end of the day, get the benefits and stuff. I</p> <p>15 mean, it wasn't like he was out to get you.</p> <p>16 A. Oh, yeah, yeah. Bob's a fine guy. I have</p> <p>17 no beef with Bob. In fact, all the people were</p> <p>18 very nice. I just don't understand how it</p> <p>19 happened to me.</p> <p>20 Q. I think there's some claims for emotional</p> <p>21 distress and stuff in the lawsuit. I'm sure</p> <p>22 attorneys draft these things.</p> <p>23 But what stress, if any, or other types of</p>

36 (Pages 141 to 144)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 145	Page 147
<p>1 mental anguish have you had since March of 2005?</p> <p>2 A. Well, I'll put it to you this way: When I</p> <p>3 got hired on by DynCorp, I told Bill Warnick that</p> <p>4 I was there for 20 years or better. I was going</p> <p>5 to make a career out of driving up the road from</p> <p>6 Crestview, wearing out tires, burning up cars,</p> <p>7 making a living.</p> <p>8 There was another factor. I'm retired</p> <p>9 military. This country is at war. And I'm an old</p> <p>10 warrior that got put out to pasture, so I was</p> <p>11 doing my bit for this country, working for a</p> <p>12 defense contractor in support of the United States</p> <p>13 Army.</p> <p>14 Now, I had a very hard time understanding</p> <p>15 why all this occurred to me, why I was</p> <p>16 involuntarily terminated; so I sought out mental</p> <p>17 health counselors to find out what was going on,</p> <p>18 you know, why all this -- I needed somebody to</p> <p>19 talk to besides my wife. It's not every day</p> <p>20 you're middle-aged and you get fired, when you're</p> <p>21 planning on riding it out for a good 20 years.</p> <p>22 Q. What did you tell the counselors?</p> <p>23 A. All sorts of stuff.</p>	<p>1 A. 30-06 9 mill. Poking holes in paper.</p> <p>2 Q. That's good stress relief?</p> <p>3 A. Not bad.</p> <p>4 Q. Have there been any other events that have</p> <p>5 caused you any type of depression or anxiety over</p> <p>6 the last couple of years, other than work?</p> <p>7 A. This incident. That's all.</p> <p>8 Q. Feel like you're almost back to normal now?</p> <p>9 A. Yeah. Yes.</p> <p>10 Q. Maybe it's fair to ask: Do you feel like</p> <p>11 you are back to normal now?</p> <p>12 A. As normal as my body will let me be.</p> <p>13 Q. Have you given all the documents you have</p> <p>14 related to this lawsuit to your attorney?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you keep a diary or anything?</p> <p>17 A. No.</p> <p>18 Q. Any tape recordings, video or anything that</p> <p>19 relate to this lawsuit in any way?</p> <p>20 A. Oh, no. Only thing I video is my kids.</p> <p>21 Q. What doctors are you still -- are you still</p> <p>22 seeing any doctors?</p> <p>23 A. Oh, yeah.</p>
Page 146	Page 148
<p>1 Q. Things unrelated to the job as well?</p> <p>2 A. Well, things related to the job, things</p> <p>3 unrelated to the job, how I felt about the whole</p> <p>4 situation that occurred to me. It's not</p> <p>5 everything; it's one of those things.</p> <p>6 I was doing my bit for the country and</p> <p>7 making a living for my family, and making a pretty</p> <p>8 good living at that; and this happens, this</p> <p>9 incident in my life.</p> <p>10 Q. Are you still able to do other things in</p> <p>11 your life? hobbies and stuff?</p> <p>12 A. Yeah.</p> <p>13 Q. What do you like to do?</p> <p>14 A. I like to go deep-sea fishing.</p> <p>15 Q. Been a good year?</p> <p>16 A. Well, yeah; not bad.</p> <p>17 Q. Where do you go fishing?</p> <p>18 A. Down in Destin. Hop on a boat, go out, hit</p> <p>19 some of the wrecks, drop a line, pull up a fish.</p> <p>20 I also like going to the rifle club on</p> <p>21 Herbert Field shooting a high-powered rifle and</p> <p>22 pistol now and then. Target shooting.</p> <p>23 Q. .308s, or what do you shoot?</p>	<p>1 Q. Are you still seeing any mental health</p> <p>2 providers?</p> <p>3 A. Yes.</p> <p>4 Q. Who do you see for that?</p> <p>5 A. I see a Dr. Kelley over in Pensacola in the</p> <p>6 VA.</p> <p>7 Q. A VA doctor?</p> <p>8 A. VA clinic over there.</p> <p>9 Q. Is that where the Lexapro comes from?</p> <p>10 A. No. My Lexapro was prescribed to me by my</p> <p>11 physician on Eglin, Dr. Kosmatka.</p> <p>12 Q. Has Dr. Kelley prescribed any prescription</p> <p>13 drugs?</p> <p>14 A. No. No, he doesn't.</p> <p>15 Q. I believe there was a question in discovery</p> <p>16 that asked something about your data, and you said</p> <p>17 something about your computer hard drive had</p> <p>18 crashed?</p> <p>19 A. Oh, yeah. Yeah, my computer hard drive</p> <p>20 crashed.</p> <p>21 Q. Did you lose anything related to this</p> <p>22 lawsuit at all?</p> <p>23 A. That spreadsheet, everything. Everything I</p>

37 (Pages 145 to 148)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 149	Page 151
<p>1 had was gone. This is the only thing I have a 2 copy of. 3 Q. Was there anything else related to the 4 lawsuit? 5 A. Everything that I had. All the letters that 6 I had typed up and had sent out, per this tracking 7 device, gone, other than the copies that were made 8 prior to the crash. Everything else is gone. 9 MR. STARLING: Can we go off the record 10 for a second? 11 (An off-the-record discussion 12 was held.) 13 (Defendant's Exhibit No. 29 was 14 marked for identification and a 15 copy of the same is attached 16 hereto.) 17 (BY MR. STARLING) 18 Q. I've handed you what's been marked as 19 Defendant's Exhibit No. 29. These are your 20 responses to Defendant's Request for Production of 21 Documents. 22 I believe you testified a minute ago that 23 you produced all the documents in your possession</p>	<p>1 Department of Labor. 2 Q. And on the second page, there is a box at 3 the bottom that appears that you typed in that 4 box; is that correct? Did you type this up? 5 A. Oh, yes, that's right. 6 Q. Did you complete this or someone else? 7 A. I completed it, yes. 8 Q. So that is, you typed in what is in that box 9 on the bottom of the second page? 10 A. Yes. It's missing part of the statement. 11 Q. Is that it on the third page? 12 A. Yes. Sorry. 13 (Defendant's Exhibit No. 31 was 14 marked for identification and a 15 copy of the same is attached 16 hereto.) 17 Q. I'm handing you Defendant's Exhibit 31. Do 18 you recognize that document? 19 A. Yes, sir, I certainly do. 20 Q. Is that your handwriting on the document? 21 A. Yes, sir. 22 Q. Is that your signature on the bottom? 23 A. Yes, sir.</p>
Page 150	Page 152
<p>1 which in any way relate to your lawsuit to your 2 attorney; is that correct? 3 A. This is correct. 4 Q. Have you reviewed this request for 5 production before? 6 A. Yes, sir. My attorney e-mailed it to me, 7 and I printed it out and I responded accordingly 8 to the questions. 9 Q. Is it your position that you have produced 10 all the documents responsive to these requests? 11 A. Yes, sir. 12 (Defendant's Exhibit No. 30 was 13 marked for identification and a 14 copy of the same is attached 15 hereto.) 16 Q. Let me hand you what has been marked as 17 Defendant's Exhibit 30. 18 Do you recognize the document I've marked as 19 Defendant's Exhibit 30? 20 A. Yes, sir. 21 Q. Is this a complaint that you filed with the 22 Department of Labor? 23 A. I filed it with the OFCCP, yes, sir,</p>	<p>1 Q. And is this an NLRB charge you filed with -- 2 or Charge of Discrimination you filed with the 3 NLRB? Strike that. I apologize. 4 Is this a Charge you filed with the NLRB 5 against AFS? 6 A. Yes, sir. 7 Q. And ultimately did you withdraw this 8 complaint? 9 A. Yes, sir. After I was -- I was under the 10 impression that the NLRB would work on my behalf. 11 But after a very lengthy telephone discussion with 12 the investigator on the other end, I found out how 13 the NLRB works, and I withdrew because it was not 14 the avenue I wanted to take. 15 Q. Why was that? 16 A. Why was that? 17 Q. Why wasn't it the avenue you wanted to take? 18 A. Because they didn't provide the service I 19 wanted. They didn't provide the service or action 20 or requested product or -- how can I describe it? 21 Q. Remedy? 22 A. There you go. Remedy is a very good word. 23 Q. What were you looking for?</p>

38 (Pages 149 to 152)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 153	Page 155
<p>1 A. Having them take a look into this incident</p> <p>2 for me. And I was misled by my understanding of</p> <p>3 how the NLRB worked.</p> <p>4 So once I found out what they did, then I</p> <p>5 withdrew it. Because what I was wanting them to</p> <p>6 do wasn't in their scope.</p> <p>7 Q. What did you want them to do?</p> <p>8 A. I wanted them to take a look and investigate</p> <p>9 or determine any kind of wrongdoing on AFS's part.</p> <p>10 But after I found out what their real mission was,</p> <p>11 wrong agency.</p> <p>12 (Defendant's Exhibit No. 32 was</p> <p>13 marked for identification and a</p> <p>14 copy of the same is attached</p> <p>15 hereto.)</p> <p>16 Q. I've handed you what has been marked as</p> <p>17 Defendant's Exhibit No. 32.</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you recognize that document?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Is that the Charge of Discrimination you</p> <p>22 filed with the EEOC?</p> <p>23 A. EEOC? Yes, sir.</p>	<p>1 hereto.)</p> <p>2 Q. I'm handing you what has been marked as</p> <p>3 Defendant's Exhibit No. 34. Do you recognize that</p> <p>4 document?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Is that a letter -- it appears to have been</p> <p>7 sent to Darlene Whelan but also copied to you --</p> <p>8 A. Yeah. I got a courtesy copy.</p> <p>9 Q. -- stating that the matter had been</p> <p>10 withdrawn from the NLRB?</p> <p>11 A. Yes, sir, that is correct.</p> <p>12 Q. Derek Cottrell was the NLRB agent that you</p> <p>13 spoke with. Do you recall that?</p> <p>14 A. That name does sound familiar, yes, sir.</p> <p>15 (Defendant's Exhibit No. 35 was</p> <p>16 marked for identification and a</p> <p>17 copy of the same is attached</p> <p>18 hereto.)</p> <p>19 Q. I'll show you what's been marked as</p> <p>20 Defendant's Exhibit 35. Do you recognize that</p> <p>21 document?</p> <p>22 A. It's an e-mail. Yep.</p> <p>23 Q. It appears to be an e-mail -- a string of</p>
Page 154	Page 156
<p>1 Q. I'm sorry. Equal Employment Opportunity</p> <p>2 Commission.</p> <p>3 A. That's correct, sir.</p> <p>4 Q. And did you receive a Right to Sue notice</p> <p>5 from the Equal Employment Opportunity Commission?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Did it advise you that they had found no</p> <p>8 merit to the claim?</p> <p>9 A. This is correct, yes.</p> <p>10 (Defendant's Exhibit No. 33 was</p> <p>11 marked for identification and a</p> <p>12 copy of the same is attached</p> <p>13 hereto.)</p> <p>14 Q. I'll hand you what I've marked as</p> <p>15 Defendant's Exhibit No. 33. Do you recognize that</p> <p>16 document?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is that the notification of results that you</p> <p>19 received from OFCCP?</p> <p>20 A. Yes, sir.</p> <p>21 (Defendant's Exhibit No. 34 was</p> <p>22 marked for identification and a</p> <p>23 copy of the same is attached</p>	<p>1 e-mails -- between you and Derek Cottrell at the</p> <p>2 NLRB; is that correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And is that a true and correct copy of the</p> <p>5 e-mails back and forth between you and Mr.</p> <p>6 Cottrell?</p> <p>7 A. Yes, sir.</p> <p>8 (Defendant's Exhibit No. 36 was</p> <p>9 marked for identification and a</p> <p>10 copy of the same is attached</p> <p>11 hereto.)</p> <p>12 Q. I'm handing you what's been marked as</p> <p>13 Defendant's Exhibit No. 36.</p> <p>14 Is that a true and correct copy of the</p> <p>15 Dismissal and Notice of Rights you received from</p> <p>16 the EEOC?</p> <p>17 A. Yes, sir.</p> <p>18 (Defendant's Exhibit No. 37 was</p> <p>19 marked for identification and a</p> <p>20 copy of the same is attached</p> <p>21 hereto.)</p> <p>22 Q. Let me hand you what has been marked as</p> <p>23 Defendant's Exhibit No. 37. I will state to you</p>

39 (Pages 153 to 156)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 157	Page 159
<p>1 that this is a pleading that has been filed in</p> <p>2 this lawsuit that is identified as Plaintiff's</p> <p>3 Initial Disclosures. This was filed by your</p> <p>4 attorney.</p> <p>5 I would just like to ask you a few questions</p> <p>6 about some of the individuals listed on here.</p> <p>7 No. 4 says "Heidi Houston." Who is that?</p> <p>8 MR. JACOBS: That would be my error.</p> <p>9 That should be Brigitte.</p> <p>10 Q. Brigitte Houston, your wife.</p> <p>11 A. Okay.</p> <p>12 Q. Thomas Manski is the --</p> <p>13 A. Thomas Manski is the neurosurgeon that</p> <p>14 performed my last back surgery, to answer your</p> <p>15 question.</p> <p>16 (Defendant's Exhibit No. 38 was</p> <p>17 marked for identification and a</p> <p>18 copy of the same is attached</p> <p>19 hereto.)</p> <p>20 Q. I'm handing you what has been marked as</p> <p>21 Defendant's Exhibit No. 38.</p> <p>22 Who is Dr. Leo Chen?</p> <p>23 A. Dr. Leo Chen is a surgeon who has repaired</p>	<p>1 note on top of it?</p> <p>2 A. Yes. This is a draft of general work</p> <p>3 requirements that were opposed during the contract</p> <p>4 negotiations for the new CBA that they are</p> <p>5 currently under. I was given this by Mr. Wilmer</p> <p>6 Tharpe.</p> <p>7 Q. When was that?</p> <p>8 A. I do not remember.</p> <p>9 Q. More than a year ago?</p> <p>10 A. Most likely.</p> <p>11 Q. Who was -- who were you directing this note</p> <p>12 to?</p> <p>13 A. Back to Wilmer.</p> <p>14 Q. That's your handwriting?</p> <p>15 A. Yes, it is. And that's my signature down</p> <p>16 there.</p> <p>17 Q. Have your restrictions changed any since</p> <p>18 March of 2005?</p> <p>19 A. No.</p> <p>20 Q. They've remained constant; they are truly</p> <p>21 permanent?</p> <p>22 A. They are truly permanent, yes, sir.</p> <p>23 MR. STARLING: Why don't we take a</p>
Page 158	Page 160
<p>1 my rotator cuff, my left rotator cuff.</p> <p>2 Q. Do you recognize this letter from Dr. Chen</p> <p>3 that's been marked as Defendant's Exhibit 38?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Is this something that you had him prepare</p> <p>6 for you?</p> <p>7 A. Yes, sir.</p> <p>8 Q. When was the last time you had surgery on</p> <p>9 your shoulder?</p> <p>10 A. I'll have to look at this statement here.</p> <p>11 It says here in the letter, "... September of 2005</p> <p>12 the patient underwent his third left shoulder</p> <p>13 surgery and rotator cuff repair."</p> <p>14 Q. Is that correct? Have you had one since</p> <p>15 then?</p> <p>16 A. No.</p> <p>17 (Defendant's Exhibit No. 39 was</p> <p>18 marked for identification and a</p> <p>19 copy of the same is attached</p> <p>20 hereto.)</p> <p>21 Q. Let me hand you what's been marked as</p> <p>22 Defendant's Exhibit No. 39. It looks like a page</p> <p>23 from some printout at AFS maybe, and then a sticky</p>	<p>1 break for a few minutes?</p> <p>2 (A brief recess was taken.)</p> <p>3 (BY MR. STARLING)</p> <p>4 Q. I've got a few more documents here to</p> <p>5 authenticate.</p> <p>6 (Defendant's Exhibit No. 40 was</p> <p>7 marked for identification and a</p> <p>8 copy of the same is attached</p> <p>9 hereto.)</p> <p>10 Q. Let me hand you what I've marked as</p> <p>11 Defendant's Exhibit No. 40. Do you recognize that</p> <p>12 document?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Is that a letter that you drafted to Senator</p> <p>15 Richard Shelby?</p> <p>16 A. Yes, I did.</p> <p>17 (Defendant's Exhibit No. 41 was</p> <p>18 marked for identification and a</p> <p>19 copy of the same is attached</p> <p>20 hereto.)</p> <p>21 Q. I'm handing you what has been marked</p> <p>22 Defendant's Exhibit No. 41. Do you recognize the</p> <p>23 document marked Defendant's Exhibit 41?</p>

40 (Pages 157 to 160)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 161	Page 163
<p>1 A. Yes, I do.</p> <p>2 Q. And what is that?</p> <p>3 A. I had to submit some document to this</p> <p>4 Veterans Employment Training Service Agency, a</p> <p>5 part of the Department of Labor, to Mr. Dewey and</p> <p>6 Mr. Bolls, and establish my veteran status.</p> <p>7 (Defendant's Exhibit No. 42 was</p> <p>8 marked for identification and a</p> <p>9 copy of the same is attached</p> <p>10 hereto.)</p> <p>11 Q. I'll hand you what I've marked as</p> <p>12 Defendant's Exhibit No. 42. Do you recognize that</p> <p>13 document?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Is that a letter you received from Kenneth</p> <p>16 Manne at L-3?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And L-3 is the parent corporation of AFS,</p> <p>19 correct?</p> <p>20 A. This is correct.</p> <p>21 Q. And had you sent Mr. Manne some type of</p> <p>22 complaint? Was he responding to that?</p> <p>23 A. Yes.</p>	<p>1 A. Yes, it is.</p> <p>2 Q. Who is Donald Cirino?</p> <p>3 A. I'd have to check my spreadsheet.</p> <p>4 Q. This was another DOL or organization you</p> <p>5 were filing a complaint with?</p> <p>6 A. Yes, sir.</p> <p>7 (Defendant's Exhibit No. 45 was</p> <p>8 marked for identification and a</p> <p>9 copy of the same is attached</p> <p>10 hereto.)</p> <p>11 Q. I'm handing you what I've marked as</p> <p>12 Defendant's Exhibit 45. Do you recognize this</p> <p>13 document?</p> <p>14 A. Yes, I do.</p> <p>15 Q. And that is a letter from a compliance</p> <p>16 officer at the Department of Labor to you?</p> <p>17 A. Yes, sir.</p> <p>18 Q. It says in there, "... attached is a copy of</p> <p>19 the statements that you provided to our office."</p> <p>20 Do you have those statements?</p> <p>21 A. Interview statements you're referring to,</p> <p>22 down here at the bottom?</p> <p>23 Q. Correct.</p>
Page 162	Page 164
<p>1 (Defendant's Exhibit No. 43 was</p> <p>2 marked for identification and a</p> <p>3 copy of the same is attached</p> <p>4 hereto.)</p> <p>5 Q. I'm handing you what I've marked as</p> <p>6 Defendant's Exhibit No. 43. Do you recognize that</p> <p>7 document?</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell us what this is?</p> <p>10 A. This is the package that I was talking about</p> <p>11 on my spreadsheet. This is the package that I</p> <p>12 mailed off to different organizations on that</p> <p>13 spreadsheet.</p> <p>14 (Defendant's Exhibit No. 44 was</p> <p>15 marked for identification and a</p> <p>16 copy of the same is attached</p> <p>17 hereto.)</p> <p>18 Q. I'm handing you a document marked as</p> <p>19 Defendant's Exhibit 44. Do you recognize this</p> <p>20 document marked as Defendant's Exhibit 44?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And is that a memo from you to Donald</p> <p>23 Cirino?</p>	<p>1 A. You would have to get ahold of Mr.</p> <p>2 Christopher Williams for that.</p> <p>3 Q. When you wrote, "Signed and dated on</p> <p>4 8/31/05," is that your handwriting?</p> <p>5 A. It is, yes, sir.</p> <p>6 Q. What did you mean by that?</p> <p>7 A. I don't remember.</p> <p>8 Q. I think you've answered this question, but I</p> <p>9 want to make sure: If AFS offered you an aircraft</p> <p>10 scheduler position tomorrow, would you accept it?</p> <p>11 A. I would have to go ahead and go through the</p> <p>12 procedures with the Veterans Administration to</p> <p>13 terminate my status as permanent disabled 100</p> <p>14 percent with them to be able to accept a job with</p> <p>15 AFS.</p> <p>16 It would probably be a long and lengthy</p> <p>17 process that I would have to go through with the</p> <p>18 VA. There is a lot of paperwork involved.</p> <p>19 Q. Did you know whether there were certain</p> <p>20 places that you had qualified for typing 30 words</p> <p>21 per minute for AFS?</p> <p>22 A. Say that again, please.</p> <p>23 Q. I'm sorry. I'll strike that.</p>

41 (Pages 161 to 164)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 165	Page 167
<p>1 Did anyone advise you to go to JobsPlus to</p> <p>2 qualify for typing?</p> <p>3 A. I was told by a representative from the HR</p> <p>4 department that I should brush up on my typing</p> <p>5 skills, and then apply for the aircraft scheduler</p> <p>6 position.</p> <p>7 Q. And which meeting was that?</p> <p>8 A. I believe it was on the 11th of March.</p> <p>9 Q. Do you believe you've been fully honest with</p> <p>10 Social Security and the VA about your disability</p> <p>11 status?</p> <p>12 A. Fully honest as to my abilities to work?</p> <p>13 Q. Correct.</p> <p>14 A. I am -- I have been fully honest, yes.</p> <p>15 Q. Have you answered the questions truthfully</p> <p>16 here today?</p> <p>17 A. Yes, sir.</p> <p>18 Q. To the fullest extent of your knowledge?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Any answers you wish to change at this point</p> <p>21 in time?</p> <p>22 A. No, sir.</p> <p>23 Q. Were there any other people present in the</p>	<p>1 the deposition for today. The deposition does</p> <p>2 remain open because there's some outstanding</p> <p>3 subpoenaed documents, I guess, we're waiting on,</p> <p>4 and one is the response to these requests.</p> <p>5 We can see if there are any questions that</p> <p>6 need to come after that; and if we need that, we</p> <p>7 can do a quick finish-up, I assume. There may not</p> <p>8 be any questions, but I think we have to keep it</p> <p>9 open just for purposes of those documents, if</p> <p>10 that's okay with you.</p> <p>11 MR. JACOBS: Yeah, that will be all</p> <p>12 right. I have a few questions though.</p> <p>13 MR. STARLING: Oh, sure.</p> <p>14 BY MR. JACOBS:</p> <p>15 Q. Mr. Houston, when you applied to the VA for</p> <p>16 disability, did you give them any information</p> <p>17 about your inability to work, other than the</p> <p>18 medical documentation that we've seen so far</p> <p>19 today?</p> <p>20 A. No. I gave them all the medical</p> <p>21 documentation that they had requested.</p> <p>22 Q. Do you recall if you were ever asked to</p> <p>23 certify that you were unable to do any kind of</p>
Page 166	Page 168
<p>1 Daleville office on any of the March meetings,</p> <p>2 other than the HR people you've identified?</p> <p>3 A. Just the HR people; nobody else, other than</p> <p>4 my wife.</p> <p>5 Q. She was at the Daleville office?</p> <p>6 A. Yes.</p> <p>7 Q. When you were there March the 11th?</p> <p>8 A. No.</p> <p>9 Q. March the -- which meeting was she present</p> <p>10 at?</p> <p>11 A. The 15th.</p> <p>12 Q. The time when you went back and completed</p> <p>13 the exit forms?</p> <p>14 A. Yes. I had to outprocess.</p> <p>15 Q. She was not there on the 14th?</p> <p>16 A. No.</p> <p>17 Q. Nor the 11th nor the 7th, right?</p> <p>18 A. No, sir.</p> <p>19 Q. Is there anything else about your lawsuit</p> <p>20 you wish to tell me today?</p> <p>21 A. No, sir.</p> <p>22 Q. All right.</p> <p>23 MR. STARLING: We are going to conclude</p>	<p>1 work at all?</p> <p>2 A. No.</p> <p>3 Q. Okay. Approximately when was the last time</p> <p>4 you received a paycheck from AFS?</p> <p>5 A. September.</p> <p>6 Q. Of when?</p> <p>7 A. '04.</p> <p>8 Q. 2004? All right. Did you start paying for</p> <p>9 your insurance benefits in September of 2004?</p> <p>10 A. No.</p> <p>11 Q. Okay. When did you have to start making</p> <p>12 monthly payments on your insurance benefits?</p> <p>13 A. On the 15th of March, 2005.</p> <p>14 Q. Oh, that started in 2005?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And do you currently still have that</p> <p>17 insurance?</p> <p>18 A. Yes, I do.</p> <p>19 Q. And you are continuing to make the payments</p> <p>20 yourself for it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. When you were working at DynCorp and</p> <p>23 then subsequently at AFS, in addition to your pay</p>

42 (Pages 165 to 168)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 169	Page 171
<p>1 there, were you also receiving retirement benefits</p> <p>2 from the Air Force?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall approximately how much those</p> <p>5 retirement benefits were?</p> <p>6 A. In the neighborhood of \$1800 a month.</p> <p>7 Q. All right. Do you continue -- I believe you</p> <p>8 answered this question, but just let me clarify</p> <p>9 it: Do you still receive those retirement</p> <p>10 benefits from the Air Force?</p> <p>11 A. No, I don't.</p> <p>12 Q. Instead, you are receiving VA benefits; is</p> <p>13 that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And then some supplemental payment that you</p> <p>16 referred to?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. Okay. Is your current income less than it</p> <p>19 would have been were you still working for AFS and</p> <p>20 receiving your Air Force retirement benefits?</p> <p>21 A. Yes.</p> <p>22 Q. You've mentioned two and possibly three</p> <p>23 visits that you made to the HR office in Daleville</p>	<p>1 whether there was any possible way that the</p> <p>2 mechanic's job could be configured or arranged so</p> <p>3 that you could continue to work in that position?</p> <p>4 A. No.</p> <p>5 Q. All right. At that meeting, did anyone from</p> <p>6 -- did the representative from AFS's HR department</p> <p>7 discuss with you some other accommodation ASF</p> <p>8 might have available to you?</p> <p>9 A. Yes.</p> <p>10 Q. What was that accommodation?</p> <p>11 A. The aircraft scheduler job.</p> <p>12 Q. All right. Were you given an opportunity at</p> <p>13 that time to apply for the scheduling job?</p> <p>14 A. No.</p> <p>15 Q. Were you given any instructions about</p> <p>16 applying for the scheduling job?</p> <p>17 A. I was told to brush up on my typing skills</p> <p>18 because I had a requirement to meet 30 words a</p> <p>19 minute.</p> <p>20 Q. When you returned to the HR office on March</p> <p>21 the 14th, you did have a correctly</p> <p>22 completed/filled out return-to-work form, right?</p> <p>23 A. Yes, I did.</p>
Page 170	Page 172
<p>1 regarding your return to work. And I'm going to</p> <p>2 give you a lot of preface to this to try to</p> <p>3 separate them.</p> <p>4 On one of those visits, you took a</p> <p>5 return-to-work form that didn't have a date on it;</p> <p>6 is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Was there any discussion between you and the</p> <p>9 HR representative at that time about whether you</p> <p>10 would be able to return to your job as an aircraft</p> <p>11 mechanic?</p> <p>12 A. Yes, there was.</p> <p>13 Q. What was the gist of that discussion?</p> <p>14 A. Due to the restrictive nature of the medical</p> <p>15 restrictions placed upon me by Dr. Manski, that I</p> <p>16 would probably not be able to go back into the</p> <p>17 aircraft mechanic's job.</p> <p>18 Q. Did anyone with AFS, or did the HR</p> <p>19 representative, at that time discuss with you any</p> <p>20 possible accommodation they could make that would</p> <p>21 allow you to go back into the mechanic's job?</p> <p>22 A. No.</p> <p>23 Q. Did anyone with AFS ever discuss with you</p>	<p>1 Q. What date did it say you should be returned</p> <p>2 to duty?</p> <p>3 A. That day.</p> <p>4 Q. All right. Did anyone with the HR</p> <p>5 department on that date discuss with you any</p> <p>6 possible accommodation that could be made to the</p> <p>7 aircraft mechanic job so that you could continue</p> <p>8 to work in that position?</p> <p>9 A. No.</p> <p>10 Q. Did you accept that you were not going to be</p> <p>11 able to continue to work as a mechanic at that</p> <p>12 time?</p> <p>13 A. Yes.</p> <p>14 Q. Did you ask the HR person about applying for</p> <p>15 the scheduling job?</p> <p>16 A. Yes.</p> <p>17 Q. Did you apply for the scheduling job?</p> <p>18 A. I asked for the form to reclassify, the</p> <p>19 reclassification paperwork.</p> <p>20 Q. What response did you get?</p> <p>21 A. I was not given the paperwork.</p> <p>22 Q. Were you given a reason for not being given</p> <p>23 the paperwork?</p>

43 (Pages 169 to 172)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 173	Page 175
<p>1 A. Because I had to be in my old job as an</p> <p>2 aircraft mechanic first to be allowed to</p> <p>3 reclassify as an aircraft scheduler.</p> <p>4 Q. Were you given any justification for stating</p> <p>5 that that was a requirement, that you had to be on</p> <p>6 active status in order to reclassify?</p> <p>7 A. Say that again, please.</p> <p>8 Q. Were you given any justification, any reason</p> <p>9 why HR said you had to be on active status to</p> <p>10 reclassify?</p> <p>11 A. No.</p> <p>12 Q. Was there any mention at the previous</p> <p>13 meeting that you had to be on active status to go</p> <p>14 into the scheduling job?</p> <p>15 A. No.</p> <p>16 Q. In response to a question, you indicated</p> <p>17 that the HR representative called one or more</p> <p>18 persons to discuss your return to work.</p> <p>19 Was this at the meeting on the 14th, when</p> <p>20 you came back?</p> <p>21 A. (No response.)</p> <p>22 Q. And I'll try to remember. One of them, I</p> <p>23 think, was a Donley or somebody.</p>	<p>1 A. That's what I was told, yes.</p> <p>2 Q. Were you ever told where in the Collective</p> <p>3 Bargaining Agreement that language was?</p> <p>4 A. No.</p> <p>5 Q. And had you ever been told that before by</p> <p>6 anyone at AFS?</p> <p>7 A. No.</p> <p>8 Q. On the 14th, you did not complete your</p> <p>9 outprocessing?</p> <p>10 A. Yes, that's correct.</p> <p>11 Q. Why did you not complete it?</p> <p>12 A. I was upset.</p> <p>13 Q. You answered, in response to a question, if</p> <p>14 I recall correctly, that you returned the next day</p> <p>15 on the 15th?</p> <p>16 A. Yes, I did.</p> <p>17 Q. Did you have any discussion with anyone on</p> <p>18 that date in HR about trying to accommodate your</p> <p>19 physical disabilities?</p> <p>20 A. I asked again if I could get a</p> <p>21 reclassification sheet.</p> <p>22 MR. STARLING: Object. Asked and</p> <p>23 answered.</p>
Page 174	Page 176
<p>1 A. Oh, Don Donley. Yes. The lady at the desk</p> <p>2 called my ATTC manager and was reading the</p> <p>3 restrictions. And he cut her off before she could</p> <p>4 finish and said that I could not be accommodated.</p> <p>5 Q. Okay. Did the HR representative use those</p> <p>6 words, you can't be accommodated?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Could you hear what Mr. Donley was</p> <p>9 saying?</p> <p>10 A. No. I was sitting there next to the lady,</p> <p>11 the HR lady, when she was talking on the phone to</p> <p>12 Mr. Donley about my medical restrictions. And I</p> <p>13 was quite surprised that he cut her off before she</p> <p>14 actually finished reading all the medical</p> <p>15 restrictions on the return-to-work slip.</p> <p>16 Q. Okay. Did anyone with AFS discuss with you</p> <p>17 any other possible jobs that you might be able to</p> <p>18 qualify to do?</p> <p>19 A. No.</p> <p>20 Q. Okay. Were you subsequently told that the</p> <p>21 Collective Bargaining Agreement stated that you</p> <p>22 had to be actively in your present classification</p> <p>23 in order to reclassify to another job?</p>	<p>1 Q. What was the response?</p> <p>2 A. I was not given a sheet.</p> <p>3 Q. Were you given a reason for not being given</p> <p>4 a sheet?</p> <p>5 A. I was given a reason that I had to be in my</p> <p>6 old job as an aircraft mechanic before I could</p> <p>7 reclassify into an aircraft scheduler job.</p> <p>8 Q. Okay. That's all I have.</p> <p>9 BY MR. STARLING:</p> <p>10 Q. I've got two documents I need you to</p> <p>11 authenticate real quickly.</p> <p>12 (Defendant's Exhibit No. 46 was</p> <p>13 marked for identification and a</p> <p>14 copy of the same is attached</p> <p>15 hereto.)</p> <p>16 Q. Let me hand you what I've marked as</p> <p>17 Defendant's Exhibit 46 here. Do you recognize</p> <p>18 what I've marked as Defendant's Exhibit 46?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Is that a letter you wrote to Dr. Chen?</p> <p>21 A. Yes, it is.</p> <p>22 Q. And it appears to be in the nature of asking</p> <p>23 him to support your claim with the VA?</p>

44 (Pages 173 to 176)

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 177	Page 179
<p>1 A. Yes, it is.</p> <p>2 Q. Chen was the surgeon for your shoulder?</p> <p>3 A. This is correct.</p> <p>4 (Defendant's Exhibit No. 47 was</p> <p>5 marked for identification and a</p> <p>6 copy of the same is attached</p> <p>7 hereto.)</p> <p>8 Q. Let me hand you what I've marked as</p> <p>9 Defendant's Exhibit 47. This also appears to be a</p> <p>10 similar letter to Dr. Chen; is that correct?</p> <p>11 A. This is correct.</p> <p>12 Q. And this is a letter from you to him?</p> <p>13 A. This is correct.</p> <p>14 Q. Does the aircraft mechanic job require you</p> <p>15 to lift more than 25 pounds?</p> <p>16 A. Are you asking me about the official job</p> <p>17 description or as an aircraft mechanic in general</p> <p>18 going out and working on an aircraft?</p> <p>19 Q. As an aircraft mechanic in general going out</p> <p>20 and working on an aircraft.</p> <p>21 A. Yes, it does.</p> <p>22 Q. What about climbing?</p> <p>23 A. Yes. You have to climb on a helicopter.</p>	<p>1 THE WITNESS: No, I don't, sir.</p> <p>2 MR. DEMARKO: Can I ask you if they're</p> <p>3 black or white?</p> <p>4 MR. STARLING: We've been down that</p> <p>5 road. I think we are done for today, subject to</p> <p>6 being open for the issues we've discussed earlier.</p> <p>7 MR. JACOBS: Okay.</p> <p>8</p> <p>9</p> <p>10 FURTHER THE DEPONENT SAITH NOT</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
Page 178	Page 180
<p>1 Q. Okay. What about standing more than an hour</p> <p>2 and a half?</p> <p>3 A. True. I would say yes. You've got to do a</p> <p>4 lot of standing.</p> <p>5 Q. What about prolonged sitting for more than</p> <p>6 an hour and a half?</p> <p>7 A. If you're working inside the cockpit, yes.</p> <p>8 Q. You've got to do that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Do you have to be able to bend at the waist,</p> <p>11 to lift, pull, twist, or push?</p> <p>12 A. Yes, sir.</p> <p>13 Q. This meeting on the 15th, where you say now</p> <p>14 that you asked for the reclassification form</p> <p>15 again, who did you ask for that?</p> <p>16 A. The HR representatives that were at the desk</p> <p>17 with myself and my wife.</p> <p>18 Q. Okay.</p> <p>19 MR. STARLING: Unless you have any</p> <p>20 additional questions, I think that's it for the</p> <p>21 day.</p> <p>22 MR. DEMARKO: Do you happen to know</p> <p>23 their names?</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF ALABAMA</p> <p>4 BARBOUR COUNTY</p> <p>5</p> <p>6 I hereby certify that the above and</p> <p>7 foregoing deposition was taken down by me in</p> <p>8 stenotype and the questions and answers thereto</p> <p>9 were transcribed by means of computer-aided</p> <p>10 transcription, and that the foregoing represents</p> <p>11 a true and correct transcript of the testimony</p> <p>12 given by said witness upon said hearing.</p> <p>13 I further certify that I am neither of</p> <p>14 counsel, nor kin to the parties to the action,</p> <p>15 nor am I in anywise interested in the result of</p> <p>16 said cause.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 CYNTHIA M. NOAKES,</p> <p>22 COURT REPORTER and</p> <p>23 COMMISSIONER</p>

45 (Pages 177 to 180)